



**International Covenant on
Civil and Political Rights**

Distr.: General
4 December 2009

Original: English

Human Rights Committee

**Consideration of reports submitted by States
parties under article 40 of the Covenant**

Third periodic report of States parties

Bulgaria*

[31 July 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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I. Introduction

1. The present consolidated periodic report of Bulgaria contains all legislative provisions, and judicial, administrative and other measures, taken in the period after the presentation before the Human Rights Committee of Bulgaria's second periodic report (CCPR/C/32/Add.17), (15 March 1993 until 30 September, 2008).
2. The present report has been prepared in accordance with the Guidelines regarding the form and contents of periodic reports from States parties (CCPR/C/20/Rev.1) and the general comments adopted by the Human Rights Committee in accordance with article 40, paragraph 4, of the International Covenant on Civil and Political Rights (CCPR/C/21/Rev.1 and Add. 1-4).
3. The recommendations made by the Human Rights Committee following its consideration of Bulgaria's second periodic report have been taken into account.
4. Included in this consolidated report are the laws and sub-normative acts adopted during the period from 1993 to 2008 concerning the International Covenant on Civil and Political Rights, as well as information on new mechanisms in the field of human rights.

II. General information

5. In the period covered by the present report there was an ongoing process in Bulgaria to further improve the democratic system. In particular, further substantive progress was achieved in the sphere of protection of civil and political rights.
6. A number of additional measures were taken with a view to harmonizing domestic legislation with the International Covenant on Civil and Political Rights, as well as with other international human rights instruments. These measures include not only domestic legislation, but also the judiciary and administrative practices.
7. The Republic of Bulgaria is a democratic State based on the rule of law. It is governed in accordance with the Constitution and the laws of the country (art. 4, para. 1 of the Constitution of the Republic of Bulgaria).
8. Article 5, paragraph 1, stipulates that "The Constitution is the supreme law, and no other law shall contravene it." Paragraph 2 explicitly states that "The provisions of the Constitution shall apply directly.
9. Each of the three branches of power (legislative, executive and judicial) is independent of the others and relations between the institutions are functional.
10. The Bulgarian Constitution enshrines the legal status of citizens in conformity with a number of internationally recognized principles in the field of human rights, in particular the principle of full equality.
11. The Constitution reiterates the human values of freedom, peace, humanism, equality, justice and tolerance. It proclaims the recognition of, and respect for, the equality of the individual person (the preamble of the Constitution, also arts. 4, para. 2; and 25 to 27). The Constitution stipulates also that one of its principles is the equality of all citizens before the law.
12. The principle that all persons in the Republic of Bulgaria are equal and shall not be discriminated is enshrined in article 6, paragraph 2 of the Constitution. It prohibits any discrimination on grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status, or property status. This

constitutional principle has been incorporated in domestic legislation. The Law on Protection against Discrimination,¹ the Criminal Procedure Code and the Tax Procedural Code are examples that the above-mentioned principle has been included in domestic legislation (details concerning the Law on Protection against Discrimination are provided under article 20 of the Covenant).

13. In case of a dispute between normative acts, the judicial organs shall apply the act having a higher stature. This unambiguously means that any form of discrimination shall be sanctioned irrespective of whether such a criterion has been incorporated in law, or not.

14. The Constitution contains direct references to different public spheres, which shall be regulated by law, e.g. article 11, paragraph 3 (The procedure applying to the formation and dissolution of political parties and the conditions pertaining to their activity shall be established by law); article 16 (labour is guaranteed and protected by law); article 17, paragraph 1 (The right to property and inheritance shall guaranteed and protected by law), paragraph 4 (The regime applying to the different units of State and municipal property shall be established by law), and paragraph 5 (Forcible expropriation of property in the name of the State and municipal needs shall be carried out only under law, provided that these needs cannot be met otherwise, and after fair compensation has been guaranteed in advance).

15. The Constitution takes into account the existing ethnic, religious and linguistic diversity in the country. A number of constitutional provisions are indicative in this respect (arts. 37, para. 1, 36, para. 2; and 54, para. 1).

16. Freedom of association is guaranteed to every citizen in the Republic of Bulgaria. There are many legal political parties, citizens associations, including non-governmental organizations, cultural organizations, clubs, etc. Ethnic, religious and linguistic communities freely conduct their activities in accordance with the Law on Individuals and Family. In this respect Bulgaria strictly abides by the provision of article 22, paragraph 2 of the International Covenant on Civil and Political Rights: "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others ..."

17. The observance of, respect for and full compliance with the Constitution and domestic laws guaranteeing the freedom of assembly is an obligation of the organs of the executive power, the judiciary, the prosecutor's office, the police, mayors and municipal councils, as well as of all people living on the territory of the Republic of Bulgaria (citizens and non-citizens).

18. Concerning freedom of expression, slander can no longer be punished by imprisonment and the level of possible fines was reduced by the National Assembly.

19. The National Council of Radio and Television is empowered by law to protect the freedom of expression, the independence of Radio and TV operators and public interest. The National Council diligently monitors whether the principle of pluralism in the Bulgarian National Television and Radio is complied with.

20. Freedom of religion is guaranteed in conformity with international standards, which is recognized by most confessions and non-governmental organizations in the country. A new Law on Religions has been adopted in 2002.

¹ In force since 1 January, 2004, State Gazette No. 86 of 30 September 2003, last amended on 30 November, 2007, State Gazette No 100 of 30 November 2007.

21. Bulgaria has confirmed its resolve to improve conditions in prisons in compliance with international requirements. Conditions in prisons and correctional facilities have been steadily improving, though there are still some problems, such as overcrowded cells, the quality of meals and sanitation conditions. Concerning preliminary arrests conditions in some detention facilities still seem to be not fully satisfactory. Also, a number of NGOs have come up with reports on police violence in the period following the last periodic report. They also allege that complaints against the actions by law-enforcement officials claiming brutal treatment of those arrested are not always investigated thoroughly.

22. Problems with trafficking of people, particularly women still occur. Recent sociological surveys show that some women from the more vulnerable groups may still be willing to take the risk hoping that this will ensure them a better life. Increasing border controls have not eliminated the problem completely. A more effective policy of prevention and information of the vulnerable groups among the population is therefore being pursued.

23. The State Agency for Child Protection (SACP) was created as a specialized body by the Council of Ministers, under Decree No. 226 of 30 October 2000, pursuant to the Law for the Protection of the Child. The State Agency was given the mandate to coordinate and monitor the child protection policy. It is headed by Mrs. Shirin Mestan (a Bulgarian citizen of Turkish origin). SACP performs mainly methodological functions and exercises control over child rights and the criteria for social services for children. The service planning is done through the adoption of annual programmes for child protection and other strategies at the level of municipalities, as well as by the Agency for Social Assistance on the national level. Municipal strategies are developed by the Directorates for Social Assistance (DSA), but are not always backed up by sufficient resources. Planning at regional level is at an initial stage.

24. SACP's main achievement is that it contributed significantly to drawing added attention to the problems of children at risk and placing the issue firmly as a priority on the national agenda.

25. Under the Law on the Asylum and the Refugees (May 1999), a Specialized Agency on Refugees was created to ensure the coordination of all administrative and judicial procedures related to asylum seekers.

26. In October 1999, the National Assembly passed the Law on Alternate Military Service. An Alternate Military Service Commission was established to clear young people for the alternate service. Subsequently, with the amendments introduced in 2007 in the Law on Defense and the Armed Forces of the Republic of Bulgaria of 1996, conscription military service was abolished as of 1 January 2008. At present all categories of military personnel are recruited on a contract basis.

27. During the period under review (1993–2008) a number of elections were held in the country, namely, general parliamentary elections (1997, 2001, 2005), presidential elections (2001, 2006), and local elections (1999, 2005)). During 2005–2009 the Republic of Bulgaria had a coalition government of the Bulgarian Socialist Party (BSP), the National Movement for Stability and Progress² and the Movement for Rights and Freedoms (MRF).

28. Civil society has been very active in Bulgaria for a considerable time now. On the whole, non-governmental organizations have been playing an active and important role in society, particularly in quite a number of spheres on national, regional and local levels. There are non-governmental organizations of great intellectual potential which exert

² Until 3 June 2007, the present National Movement for Stability and Progress was officially known as National Movement Simeon II.

influence on the formation of the civil society's daily agenda. They promote a number of initiatives aimed at resolving some of the problems facing Bulgarian society.

29. The legal framework of the NGO activities is in conformity with international standards. There is a growing tendency on the part of the administration to consult with NGOs on issues of concern for society.

30. Article 117 of the Constitution stipulates that the judiciary shall protect the rights and legitimate interests of citizens. This obligation is common to all institutions of the judiciary within the framework of their respective competences.

31. The Constitutional Court (established in 1991) has an important role in the sphere of human rights protection. It is not part of the judicial system proper. The main function of the Constitutional Court is to provide mandatory interpretations of the Constitution and to rule on the constitutionality of the acts of the National Assembly, including whether the said legal acts are in conformity with the human rights provisions contained in the Constitution. The Constitutional Court also rules on whether the laws of the country are compatible with the generally accepted norms of international law and with the international instruments to which Bulgaria is party. Thus, the Constitutional Court is one of the guarantees of the fulfilment of the obligations accepted by Bulgaria with its accession to international human rights instruments.

International instruments

32. Bulgaria has ratified the following main universal international instruments in the sphere of human rights:

International Covenant on Civil and Political Rights;³

Optional Protocol to the International Covenant on Civil and Political Rights;⁴

Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty;⁵

International Covenant on Economic, Social and Cultural Rights;⁶

International Convention on the Elimination of All Forms of Racial Discrimination;⁷

Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment;⁸

Convention on the Elimination of All Forms of Discrimination against Women;⁹

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;¹⁰

Convention on the Rights of the Child;¹¹

³ Decree No. 1199 by the Presidium of the National Assembly on 23 July 1970; entered into force in respect of Bulgaria on 23 March, 1976.

⁴ Ratified by the National Assembly on 10 December 1991; entered into force on 26 June 1992.

⁵ Ratified on 10 August 1999.

⁶ Ratified by the National Assembly on 10 December 1991; entered into force on 26 June 1992.

⁷ Ratified by a Decree No. 515 of the State Council on 23 June 1966; entered into force on 4 January 1969.

⁸ Ratified by a Decree No. 3384 of the State Council, dated 9 October 1986; entered into force on 20 June 1987.

⁹ Ratified on 8 February 1982.

¹⁰ Ratified on 20 September 2006.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;¹²

Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography¹³

33. Following the ratification by Bulgaria of the two Optional Protocols to the Convention on the Rights of the Child – on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography – concrete actions were taken at the legislative level; in terms of national policies concerning children and child protection; in the adoption of a multi-section approach to child victims; in the putting in place of social services for children; and in awareness raising programmes for the general public, as well as for professionals involved with children.

34. Likewise, Bulgaria passed an Act thereby recognizing the compulsory jurisdiction of the International Court of Justice, and consequently withdrawing its reservations to a number of provisions of certain international conventions, which provide for such jurisdiction.

35. Under article 5, paragraph 4, of the Constitution “Any international instruments which have been ratified by the constitutionally established procedure, promulgated, and come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise.”

Recommendations by the Human Rights Committee

36. With regard to the recommendation by the Human Rights Committee that the restrictions in domestic law concerning human rights should be reviewed and brought into full conformity with the provisions of articles 18, 19 and 21 of the International Covenant,¹⁴ there is the Law for Amnesty of 2002 which granted amnesty to those found guilty of crimes under article 361, paragraphs 1 and 2 of the Criminal Code, committed during the period between 13 July 1991 and 31 December 1998 in exercise of their constitutional right to freedom of conscience, thought and to free choice of a religion.

III. Information related to articles 1 to 27 of the International Covenant on Civil and Political Rights

Article 1

Paragraph 1

37. Pursuant to article 5, paragraph 4, of the Constitution the International Covenant on Civil and Political Rights is part of the domestic legislation and has direct application in Bulgaria.

¹¹ Ratified by a decision of the Grand National Assembly on 11 April, 1991; entered into force on 3 July 1991.

¹² Ratified by an Act passed by the National Assembly on 31 October 2001; entered into force on 12 February 2002.

¹³ Ratified on 2 November 2001.

¹⁴ See CCPR/79/Add. 24, Section E, “Suggestions and recommendations”, item 9.

38. The implementation in good faith of the provision of article 1 of the International Covenant on Civil and Political Rights by Bulgaria stems, inter alia, from article 24 of the Bulgarian Constitution, which stipulates that “(1) The Republic of Bulgaria shall conduct its foreign policy in accordance with the principles and norms of international law; (2) The foreign policy of the Republic of Bulgaria shall have as its uppermost objective the national security and independence of the country, the well-being and the fundamental rights and freedoms of the Bulgarian citizens, and the promotion of a just international order.”

39. The Second periodic report of the Republic of Bulgaria (CCPR/C/32/Add.17) under article 40 of the International Covenant on Civil and Political Rights covered in detail the constitutional provisions related to the exercise of the right of self-determination of the Bulgarian people.

40. Article 1 of the Constitution states as follows: “(1) Bulgaria is a republic with a parliamentary form of government. (2) The entire power of the State shall derive from the people. The people shall exercise this power directly and through the bodies established by this Constitution. (3) No party of the people, no political party nor any other organization, State institution, or individual shall usurp the expression of the popular sovereignty.”

41. Article 2 states that “(1) The Republic of Bulgaria is a unitary State with local self-government. No autonomous territorial formations shall exist. (2) The territorial integrity of the Republic of Bulgaria is inviolable.”

42. Article 4 states as follows: “(1) The Republic of Bulgaria is a State governed by the rule of law. It is governed by the Constitution and the laws of the country. (2) The Republic of Bulgaria shall guarantee the life, dignity, and rights of the individual and shall create conditions conducive to the free development of the individual and the civil society.”

43. The provision of article 1, paragraph 1, of the International Covenant on Civil and Political Rights: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”, has been fully realized in the Republic of Bulgaria since 10 November 1989.

44. Article 10 of the Constitution provides that Parliamentary and local elections in Bulgaria “shall be held on the basis of universal, equal, and direct suffrage by secret ballot.” Such elections are held in Bulgaria every four years – with the exception of cases where the political situation in the country requires early elections.

45. The National Assembly is a single-chamber body with 240 deputies. They are elected by Bulgarian citizens (required age limit is 18 years of age) in direct, free and secret ballot.

46. During the period of 1997–2008, a number of elections were held in Bulgaria: parliamentary elections (1997, 2001 and 2005), presidential elections (2001 and 2006) and local elections (1999 and 2005).

47. In the period from 2005 the Republic of Bulgaria has had a coalition government composed of the Bulgarian Socialist Party, the National Movement for Stability and Progress and the Movement for Rights and Freedoms.

48. Article 11 of the Constitution states that “(1) Politics in the Republic of Bulgaria shall be founded on the principle of political plurality. (2) No political party or ideology shall be proclaimed or affirmed as a party or ideology of the State. (3) All parties shall facilitate the formation and expression of the citizens’ political will. The procedure applying to the formation and dissolution of political parties and the conditions pertaining to their activity is established by law.”

Paragraph 2

49. The provision in article 1, paragraph 2, of the International Covenant on Civil and Political Rights is fully reflected in article 18 of the Bulgaria Constitution, which stipulates that:

“(1) The state shall enjoy exclusive ownership rights over the earth’s nether, coastal beaches, national thoroughfares, waters, forests, national parks, as well as archaeological reserves established by law.

(2) The state shall exercise sovereign rights in prospecting developing, utilizing, protecting, and managing the continental shelf and the exclusive off-shore economic zone, and the biological, mineral, and energy resources therein.

(3) The state shall exercise sovereign rights with respect to radio frequencies and the geo-stationary orbital positions assigned by international instruments to the Republic of Bulgaria.

(4) A state monopoly shall be established by law over railway transport, national postal and telecommunication networks, use of nuclear energy, manufacturing of radioactive products, armaments, explosives, and powerful toxic substances.

(5) The conditions and procedure by which the state shall grant concessions over units of property and licenses for the activities enumerated in the preceding two paragraphs shall be established by law.

(6) The state shall utilize and manage all the state’s assets to the benefit of citizens and society.”

Paragraph 3

50. In conformity with its international obligations, in particular those mentioned in article 1, paragraph 3 of the International Covenant on Civil and Political Rights, the Republic of Bulgaria recognizes the right of all peoples to dispose freely of their natural resources. At the same time, the Republic of Bulgaria believes that in the exercise of this right each State has corresponding obligations in respect of other States and the international community.

51. In pursuit of its foreign policy in the United Nations and other international organizations, the Republic of Bulgaria follows the principles of respect for the sovereignty, non-violation of frontiers and territorial integrity, non-interference in domestic affairs, respect for human rights and fundamental freedoms, as well as the right of peoples of self-determination. The Republic of Bulgaria strictly observes the principle of maintaining and developing relations with neighbouring and other States on the basis of good-neighbourly relations, cooperation, equality, mutual respect and confidence.

Article 2**Paragraph 1**

52. The Constitution of the Republic of Bulgaria guarantees the rights of Bulgarian citizens and aliens alike.

53. Article 6 of the Constitution states that all persons are born free and equal in dignity and rights, and that all citizens shall be equal before the law without any privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status, or property status.

54. Article 26 of the Constitution states that “(1) Irrespective of where they are, all citizens of the Republic of Bulgaria shall be vested with all rights and obligations proceeding from this Constitution. (2) Aliens residing in the Republic of Bulgaria shall be vested with all rights and obligations proceeding from this Constitution, except those rights and obligations for which a Bulgarian citizenship is required by this Constitution or by another law.”

55. Article 3, paragraph 1 of the Law on the Aliens in the Republic of Bulgaria also provides that aliens residing legally in the territory of the country shall enjoy all the rights and obligations under domestic law, with the exception of those which require Bulgarian citizenship.

56. Pursuant to article 27 of the Bulgarian Constitution: “(1) Aliens residing legally in the country shall not be expelled or extradited to another state against their will, except in accordance with the provisions and the procedures established by law. (2) The Republic of Bulgaria shall grant asylum to aliens persecuted for their opinions or activity in the defence of internationally recognized rights and freedoms. (3) The conditions and procedure for the granting of asylum shall be established by law.”

57. Article 6, paragraph 3 of the Law on Asylum and Refugees states that “Any foreign who has entered the Republic of Bulgaria and has sought refugee status shall not be returned to the territory of the state where his freedom or life has been threatened because of race, religion, nationality, belonging to a particular social group or because of his political convictions.”

58. Article 18 of the Law stipulates that “There shall be no restrictions or privileges of the rights of refugees and candidates for refugees who have applied for such a status, on grounds of race, nationality, ethnic belonging, sex, origin, religion, education, convictions or political affiliation.”

59. Article 19 of the Law states that “members of the family accompanying a refugee who has applied for a refugee status or has already acquired such a status shall enjoy the same rights and obligation as his.”

60. Article 440, paragraph 1 of the Criminal Procedure Code provides that: “Any request from another state for handing over a foreign citizen shall be addressed to the Prosecutor General; any request for serving a sentence shall be addressed to the Minister of Justice.”

61. These provisions are applied in accordance with article 2, paragraph 1 of the International Covenant on Civil and Political Rights and article 5, paragraph 4 of Bulgaria’s Constitution.

62. The Criminal Procedure Code¹⁵ contains the following provision: “Equality of Citizens in Penal Legislation – Article 1 (1): All citizens involved in penal legislation, shall be equal before the law. There shall be no limitations and restrictions of their rights or privileges, on grounds of race, nationality, ethnic affiliation, origin, religion, education, convictions, political affiliation, personal or social status; (2) Courts, prosecutors and investigators shall apply the laws strictly and on an equal basis with respect of all citizens.”

63. There is a sub-chapter in the Tax Procedure Code, namely, article 9, entitled “Equal Application”, whereby tax organs and public officials shall apply the laws strictly and on an equal basis in respect of all tax payers. In particular, article 9 (2) states that “there shall be

¹⁵ State Gazette, No. 89 of 15 November 1974; subsequent amendments in 1996, 1997, 1009, 1999, 2001, 2002, 2003, 2004, 2005.

no privileges or limitations and restrictions on grounds of nationality, origin, ethnic affiliation, religion, sex, race, education, and conviction, social, political or property status.”

64. The Labour Code also contains a similar provision. Article 8, paragraph 3 states that there shall be no direct or indirect discrimination, privileges or limitations in the implementation of labour rights, on grounds of nationality, origin, race, colour, age, political or religious convictions, membership in trade unions and other public organizations and movements, family, social and property status and disability.

65. The Law on National Education states in article 4, paragraph 2 the following: “There shall be no limitations, restrictions or privileges on grounds of race, nationality, sex, ethnic or social origin, religion and beliefs, and social status as well.”

66. The Law on Higher Education (art. 4) states that “There shall be no privileges, limitations and restrictions on grounds of age, race, nationality, ethnic affiliation, social origin, political opinion and religion and beliefs.”

67. The few limitations in the Bulgarian legislation are compatible with the restrictions and limitations provided for in the relevant international legal instruments to which Bulgaria is a party. For example, article 57 of the Constitution states that “(1) The fundamental civil rights shall be irrevocable. (2) Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others.”

68. Also, the Law on Protection against Discrimination defines in article 7 explicitly and in detail all the cases and circumstances which do not constitute discrimination.

“Art. 7 (1) The following shall not be deemed discrimination:

1. The different treatment of persons on the basis of their citizenship or of persons without citizenship when it is provided by the law or international treaty to which the Republic of Bulgaria is a party;

2. The different treatment of persons on the basis of a characteristic, related to any of the grounds, referred to in Article 4, Paragraph 1, when the said characteristics, by the nature of a particular occupation or activity, or of the conditions in which it is carried out, constitutes a genuine and determining professional requirement, the objective is lawful and the requirement does not exceed what is necessary for its achievement;

3. The different treatment of persons on the basis of religion, belief or sex in relation to an occupation, carried out in religious institutions or organisations when, by reason of the nature of the occupation or of the conditions in which it is carried out the religion, belief or sex constitutes a genuine and determining professional requirement with regard to the character of the institution or organisation, when objective is lawful and the requirement does not exceed what is necessary for its achievement;

4. The different treatment of persons on the basis of religion, belief or sex in religious education or training, including training or education for the purpose of carrying out an occupation referred to in point 3;

5. Setting requirements for minimum age, professional experience or length of service in recruitment procedures or in granting certain job-related benefits, when this is objectively justified for achieving a lawful objective and the means for its achievement do not exceed what is necessary;

6. Setting requirements for maximum age in recruitment procedures, which is connected with the need for training in order to occupy the respective

position or with the need for a reasonable time limit of service before retirement, when this is objectively justified for achieving a lawful objective and the means for its achievement do not exceed what is necessary;

7. The special protection of pregnant women and mothers, laid down by law, unless the pregnant woman or the mother does not wish to use this protection and she has so informed the employer in a written form;

8. The age requirements and the requirements for length of service or official service, laid down by the law for the purposes of pension insurance;

9. The measures within the meaning of the Employment Promotion Act;

10. The different treatment of persons with disabilities during training and acquiring an education to the effect of satisfying specific educational needs aiming at equalisation of their opportunities;

11. Setting requirements for minimum and maximum age for access to training and education, when this is objectively justified for achieving a lawful objective and the means for its achievement do not exceed what is necessary with a view of the nature of the training or education, or of the conditions in which it is conducted and the means for its achievement do not exceed what is necessary;

12. The measures in the field of education and training to ensure balance in the participation of men and women, insofar and until such measures are necessary;

13. The special measures benefiting individuals or groups of persons in disadvantaged position on the basis of the grounds, referred to in Article 4, Paragraph 1 aiming at equalisation of their opportunities, insofar and until such measures are necessary;

14. The special protection of children without parents, under-age persons, single parents and persons with disabilities, laid down by law;

15. The measures for protection of originality and the identity of persons, belonging to ethnic, religious or linguistic minorities, and their right of sustaining and developing, individually or jointly with the rest of their group members, their culture, of professing and practicing their religion, or of using their own language;

16. The measures in the field of the education and training to ensure participation of persons belonging to the ethnical minorities, as far and while these measures are necessary;

(2) The list of activities where sex is a genuine and determining professional requirement in the meaning of Paragraph 1, point 2) shall be established with:

(a) An ordinance of the Minister of Labour and Social Policy, jointly with the Minister of Interior. This list shall be duly agreed with the occurring changes in the working conditions and shall be revised at least once on every three years.

(b) An ordinance of the Minister of Defence for the activities and the positions on the regular military service in the armed forces.”

69. Concerning defence and the armed forces there are certain limitations applied in time of peace, which are required because of the character of the armed services, but there are no legal provisions which create different and discriminatory legal status for the individuals enrolled in the armed forces based on race, colour, or social status. Specifics applicable to armed forces personnel include:

(a) Language – the official language in the armed forces is the Bulgarian. It is the compulsory language in all circumstances involving military obligations. This is not discrimination in terms of the International Covenant, for article 3 of the Constitution proclaims the Bulgarian language as being the official one in the Republic of Bulgaria;

(b) Religious convictions – under the law, article 195 of the Law of Defence and the Armed Forces of the Republic of Bulgaria, the military personnel are free in keeping with the basic principle of the freedom of religion to profess and carry out their religious convictions and rituals outside the limits of the military bases and premises;

(c) Sex – the Law on Protection against Discrimination explicitly and in details defines all the cases and circumstances which do not constitute discrimination. This is spelled out in article 7 of the Law (see above).

Commission for Protection against Discrimination

70. The Commission for Protection against Discrimination was established under the provisions of the Law on Protection against Discrimination.

71. The Commission is a collegial body comprised of nine members and at least four of them should be jurists. The National Assembly (Bulgarian Parliament) elects five of the members, including the Commission's Chairperson and Deputy Chairperson, and the President of the Republic of Bulgaria appoints four of the Commission members. The mandate of the Commission members is five years. In the process of election or appointment of Commission members, the principles of balanced participation of women and men and participation of persons belonging to ethnic minorities should be respected. The present members of the Commission were elected on 13 April 2005 and appointed on 16 May 2005. The present membership of the Commission consists of five women and four men. Six of the members are jurists. Four of the members are of non-Bulgarian ethnic background.

72. According to the provisions of article 40 of the Law on the Protection against Discrimination the Commission is an independent specialised State organ for prevention of discrimination, protection against discrimination and ensuring equal opportunities. The Commission exercises control over the implementation and compliance with the Law on the Protection against Discrimination or other laws regulating equality of treatment.

73. The Commission has regional representatives. The terms and procedures for their designation are regulated by the Rules of Organization and Operation, adopted by the Commission and published in the State Gazette.

74. The Rules of Organization and Operation define the administration, structure, and functions of the Commission.

75. In accordance with the provisions of article 47 of Law on the Protection against Discrimination, the Commission for Protection against Discrimination:

1. Shall establish violations of Law on the Protection against Discrimination or other laws regulating equality of treatment, the offender and the wronged party;
2. Shall decree measures for prevention from and termination of violation and restoration of the initial situation;
3. Shall impose the stipulated sanctions and apply administrative compulsory measures;
4. Shall issue obligatory prescriptions for compliance with the Law on the Protection against Discrimination and other laws, which regulate equality of treatment;

5. Shall appeal against administrative acts, which are in contravention to the Law on the Protection against Discrimination and other laws regulating equal treatment; initiate claims before the court and act as a concerned party in proceedings under the Law on the Protection against Discrimination and other laws, which regulate equality of treatment;

6. Shall issue proposals and recommendations to state and municipal authorities to terminate of discriminatory practices and to repeal their acts issued in contravention to this Law and other laws regulating equal treatment;

7. Shall maintain a public register of the adopted and entered into force decisions and obligatory prescriptions issued by the Commission;

8. Shall deliver statements on draft normative acts referring their conformity with the legislation for prevention of discrimination, as well as recommendations for adopting, repealing, amending and supplementing normative acts;

9. Shall provide independent assistance to victims of discrimination in submitting complaints about discrimination;

10. Shall conduct independent surveys concerning discrimination;

11. Shall publish independent reports and provides recommendations on any issue related to discrimination;

12. Shall exercise other competencies provided in its Rules of Organization and Operation.

76. The Commission considers and takes decisions in panels, which are appointed by the Chairperson of the Commission. The Chairperson of the Commission appoints permanent panels, specialized on enumerated grounds in article 4 of the Law on the Protection against Discrimination, namely:

1. On ethnic and racial grounds;
2. On the ground of gender;
3. On other grounds under article 4 (1).

77. At present there are five permanent panels appointed by the Chairperson. In complicated cases on one ground the Commission sits in ad hoc panels. For cases involving multiple discrimination five-member panels are formed. In article 4(1) are listed explicitly 19 grounds of discrimination as follows: gender, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinion, political affiliation, personal or public status, disability, age, sexual orientation, marital status, property status and human genome. The list is open because article 4(1) stipulates "... or any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a Party".

78. Proceedings before the Commission are initiated by a complaint of a victim of discrimination, by a signal from natural or legal persons or by self initiative of the Commission. Proceedings are not initiated and those already initiated have to be terminated in case of three years have past after the occurrence of the violation or if a court proceedings have been initiated in court under article 71 under the Law on the Protection against Discrimination. A victim of discrimination has the right to choose between the administrative proceedings before the Commission and the civil court proceedings.

79. After the initiation of proceedings the Chairperson transfers the claim to respective panel, which appoints a rapporteur between its members. The rapporteur starts an investigation, which should be carried in 30-days period. In cases, which present factual or legal complexity, this period may be prolonged with up to 30 additional days with an order

issued by the Chairperson of the Commission. The rapporteur collects written evidence, necessary for the complete and comprehensive clarification of the circumstances of the case. All natural and legal persons, State and municipal bodies have the obligation to assist the Commission in the process of investigation and to provide the required information and documents, as well as supply the necessary explanations. The presence of commercial, industrial, classified or other secret information, protected by the law may not be used as a reason to refuse assistance. In exercising its powers the Commission has the right to require documents and other information, related to the investigation; to require explanations from investigated persons on the issues, related to the investigation; to examine witnesses. In case of refusal to provide information required by the Commission or a refusal to provide access to premises under investigation, as well as other cases of not providing assistance to the Commission, the persons refusing the assistance are liable under the Protection against Discrimination Act and could be punished with a fine of 250 to 2,000 BGN (from €125 to €1,000 approximately). In case there is a danger evidence to be lost or concealed, or in case of extremely complicated collection of evidence, upon complaints' request, the evidence may be collected through a compulsory order over persons or premises, issued by a judge from the Sofia City Court upon a request from the Chairperson of the Commission. On the day of entry of the request, the judge issues an order, which shall be immediately enforced. The rapporteur collects the evidence assisted by the respective police bodies.

80. After completion of the investigation the parties to the case are given the opportunity to get acquainted with the collected material and evidence. The rapporteur prepares a conclusion and submits the claim to the penal. The hearings of the penal as a rule are open. Only as an exception they could be closed under provisions of the Civil Procedural Code. At the first session of hearings the parties have to be invited to reach a voluntary agreement by the chair of the session. If they reach such agreement the panel approves it by decision and terminated further proceedings.

81. With the decision the panel ascertains the committed violation; ascertains the offender and the wronged person; determines the kind and amount of the sanctions; enforces obligatory administrative measures; ascertain that no violation of the law has been committed and leaves the claim without consideration.

82. The decisions of the Commission's panels enter into force, if: they have not been appealed against before the Supreme Administrative Court within 14 days after the notification of the decision to the parties in the proceedings; the appeal submitted has not been taken into consideration by the Supreme Administrative Court; the reached settlement among the parties has been approved by the Commission's decision. In these hypotheses the Commission decisions enter into force. The Commission controls the execution of entered into force its decisions, including imposed obligatory administrative measures, fines for natural persons and material sanctions for legal persons. According to the provisions of article 82 under the Protection against Discrimination Act a person who does not fulfil the Commissions' or Court decision issued under the Act is punished with a fine of 2,000 to 10,000 BGN (from €1,000 to €5,000 approximately). In case the violation continues after three months of the entry into force of punishment measure, a fine shall be imposed of 5,000 to 20,000 BGN (from €2,500 to €10,000 approximately).

83. In addition to cases before the Commission for Protection against Discrimination, any person whose rights under the framework Law or other laws regulating equal treatment have been violated may lodge a claim before District Court and request for:

- (a) Ascertaining the violation;
- (b) Sentencing the defendant and restoring the status quo as it has been prior to the violation, as well as restraining the defendant to commit further violations;

(c) Compensation for damages (material and non-material) suffered as a result of the violation.

84. The proceedings before the Commission are less formal in comparison to the court proceedings, shorter in time (at most two months for preliminary investigation), free of charge (no State fees are collected and the expenses done during the proceedings are covered by the budget of the Commission). A special mechanism for compensation of damages is established upon Commission's decision, which has already entered into force, on determination of the infringement committed and the violator.

85. In case of a decision of the Commission entered into force, any individual who has suffered damage from violation of rights under Law on the Protection against Discrimination and other laws, regulating equal treatment, may lodge a claim for compensation before the District Court against the persons or bodies established as infringers by the Commission.

86. According to the provision of article 71 of the Law on the Protection against Discrimination, trade unions and their divisions, as well as not-for-profit legal persons carrying out activities beneficial to public interest may, upon request from persons whose rights have been violated, lodge a claim before District Court. Besides, such organizations and legal persons may step in as a concerned party into pending proceedings before the court. In cases of discrimination, where the rights of a great number of individuals are violated the same organizations may lodge an independent claim. Individuals whose rights have been violated may step into pending proceedings as third supporting party under Civil Procedure Code.

87. The Commission's decisions can be appealed before the Supreme Administrative Court. The law also defines the mandates of regional courts.

88. Also, the Law on the Execution of Penalties does not make distinction between Bulgarian citizens and aliens found guilty by a court of law and duly sentenced. There is no difference in treatment during their stay in prison. Nevertheless, the majority of complaints sent to the Commission on Protection against Discrimination under the Law on Protection against Discrimination are by aliens sentenced to imprisonment. The latter complain that they do not have the same rights as the Bulgarian citizens while in prison, such as a prison leave, the right to interrupt serving a prison sentence, the right to work. The Commission, having analyzed the complaints has found them unfounded, with the exception of a number of complaints from aliens concerning their confinement to a prison in Sofia. Measures have been taken to rectify the situation.

General integration policy

89. Pursuant to the general integration policy of the State aimed at achieving equal integration into society of persons belonging to minorities, a number of ministries have adopted strategies and plans of action, such as:

(a) A Short-Term Strategy to implement the State policy on equal integration of Roma in the Bulgarian national culture (2000–2001);

(b) A Strategy for Educational Integration of pupils and children from ethnic minorities;

(c) A Health Strategy for persons from different ethnic minorities in vulnerable social situation;

(d) A Framework Programme for Equal Integration of Roma in Bulgarian Society;

- (e) A Plan of Action for Equal Integration of Roma in Bulgarian Society – 2003/2004;
- (f) A National Plan of Action on “Roma Decade”;
- (g) A Strategy on Educational Integration of Children and Pupils from Ethnic Minorities;
- (h) A Health Strategy for Persons from Vulnerable Ethnic Minorities, as well as action plans for the 2005–2007 period;
- (i) A National Programme for Improving Housing Conditions;
- (j) A Plan of Action as part of the National Housing Programme;
- (k) A Plan of Action as part of the Framework Programme for Equal Integration of Roma in Bulgarian Society – 2006;
- (l) A National Coordinator for the “Roma Decade 2005–2015”;
- (m) A National Programme for Promotion of High School and Senior High School Education and Pre-School Training (2006–2015). The programme is meant for children whose mother tongue is not Bulgarian.

Constitutional and legislative provisions concerning the general integration policy

90. A number of provisions in the Constitution apply directly to the general integration policy. Article 29, paragraph 1, states that: “No one shall be subjected to torture or to cruel, inhuman, or degrading treatment, or to forcible assimilation.”

91. In particular, Bulgarian legislation provides for legal guarantees against discrimination, and for creating equal opportunities and social integration of vulnerable groups in society, including persons belonging to various communities and refugees.

92. A number of other laws – on child protection, civil service, national education, culture, radio and television, copyrights and related rights, protection against unemployment, encouraging employment, social assistance, voluntary retirement security, sports, consumer rights, as well as the Code on Obligatory Social Security also provide legal guarantees against discrimination.

93. In October 2001, the Council of Ministers introduced a Programme of the Government of the Republic of Bulgaria, entitled ‘People are Bulgaria’s Treasure’. There was a special chapter on ‘Minority Integration’ which highlighted the main purposes, such as creating conditions for political, social and economic, and cultural integration of minority groups/communities in Bulgarian society, and further synchronizing domestic legislation with international human rights standards, including those of the Council of Europe.

Paragraph 2

94. During the period under review 23 laws and acts were passed by the National Assembly which directly relate to the International Covenant on Civil and Political Rights. Here is list of the laws and acts which contain specific provisions concerning the International Covenant on Civil and Political Rights.

95. The Law of the Religions 2002 was drafted to comply fully with the International Covenant on Civil and Political Rights, as well as the European Convention on Human Rights. The Law guarantees everyone the right to religion as a fundamental, personal and inviolable and irrevocable right. Everyone is entitled to his or her right of freedom of thought, conscience and religion, which includes the right to choose his or her religion, as

well as the right to profess it individually or in community with others, in public or private worship, training, rituals etc. The Law guarantees also that no one shall be restricted in exercising these rights, or to enjoy privileges because of his religion or belief. The Law also prohibits any discrimination on religious grounds. (Further details are provided below under article 18).

96. The Law on Protection against Discrimination was passed by the National Assembly on 16 September 2003¹⁶ and entered into force on 1 January of 2004.¹⁷ This Law strengthened the legal prohibition of discrimination in all spheres. It is in conformity with the joint recommendation by the United Nations Human Rights High Commissioner and the European Commission against Racism and Intolerance of the Council of Europe, calling on the States Members to create anti-discrimination legislation with the equivalent national mechanisms to apply and enforce protection against discrimination.

97. The Law on Protection against Discrimination introduced: the concept of direct and indirect discrimination in all public spheres, including the labour market; shared burden of proof in proceedings against discrimination before the Commission for Protection against Discrimination and courts; and an open list of grounds on which discrimination is prohibited.

98. The Law on Protection against Discrimination contains legal definitions of direct and indirect discrimination, harassment, sexual harassment, persecution, instigation to discrimination, racial segregation, less favourable treatment, sexual orientation and multiple discrimination. The harassment on all grounds, sexual harassment, instigation to discrimination, persecution and racial segregation, as well as building and maintenance of an architectural environment hampering the access of people with disabilities, are equated with discrimination.

99. The Law on the Judicial Reform lays down the legal structure and functions of courts, including the Supreme Court of Cassation and the Supreme Administrative Court.

The Law on the Ministry of the Interior

100. The Law on National Education guarantees equal rights of access to all levels of education to all persons, incl. those belonging to minorities. Article 9 reads as follows: "Every citizen exercises his or her right to education in a school of his or her choice, including type of education in accordance with his or her preferences and possibilities;" article 15, paragraph 2 of the Law provides for creating free, moral, initiative and bona-fide individuals who respect the rights of others, as well as their culture, language and religion.

101. There are certain exceptions in the Rules on Higher Religious Schools which take into account their specifics. The latter require that students belong to a certain religion in order to be accepted in the respective school.

The Law for the Higher Education

The Law on the Copyright and Related Rights

The Law for the Degree of Education, General Education Minimum and the Education Plan

The Law on Child Protection

The Law for Protection and Development of Culture

¹⁷ The title was amended, see State Gazette No. 68/2006.

The Law on Social Assistance**The Law of Protection of the Consumers****The Law for the Asylum and the Refugees**

102. The Law on the Civil Servant – Article 7, paragraph 4 (currently paragraph 6) states that “At taking a civil service shall not be admitted discrimination, privileges or restrictions based on race, nationality, ethnic origin, sex, origin, religion, membership in political, professional and other public organizations or movements, personal, public and proprietary status or on disabilities.”

The Law of Encouragement of Employment**The Law for the Vocational Education and Training****The Law on the Radio and Television****The Law for Taking the Census of the Population, Housing Fund and the Farms in the Republic of Bulgaria in 2001**

103. The Law on Labour Code Amendments – Article 8, paragraph 3 states that “in exercising labour rights and obligations there shall not be any direct or indirect discrimination, privileges or restrictions on grounds of origin, sex, race, colour of skin, age, political or religious convictions and affiliations, membership in trade unions and other public organizations and movements, family, public or property status and disability; this is the first time that the present provision introduces the term ‘indirect discrimination’ in the Bulgarian domestic legislation.”

The Law on Amnesty**The Law for Protection of the Personal Data**

104. Article 40 (d) of the Law on the Execution of Penalties contains a provision which prohibits persons serving prison sentences to obtain and possess printed or other matter containing xenophobic and pornographic materials, or propagating nationalistic, ethnic, racist or religious hatred.

The Law on the Agricultural Land Ownership and Use**Criminal Procedure Code**

105. A new Criminal Procedure Code (CPC) was adopted on 14 October 2005 and entered into force in 2006. The new CPC advanced the reform of pretrial procedures abolishing the three-stage system and replacing it with a two-stage one, which guarantees more effectiveness and transparency.

106. Article 22 of the Code stipulates that “criminal case shall be examined and decided in a reasonable time”. It stipulates the obligation of prosecutors and the investigation to bring the cases to court in the time indicated in the Code. Another procedure provides for the “examination of the case in court if requested by the defendant”.

107. The Law of the Legal Support regulates any judicial assistance in dealing with criminal, civil and administrative cases before all judicial instances. Involved in this practice are lawyers and all expenses are covered by the State. The aim is to guarantee equal access of the individuals before courts of law by ensuring them effective judicial and legal assistance. There are different kinds of judicial assistance, such as consultations with a view to reaching a settlement before a case is brought to court; preparation of the necessary documents, procedural representation, representation in case of arrest (under the Law of the Ministry of the Interior). The number of lawyers entered into the National Judicial Assistance Registrar is 3,839.

Administrative legislation reform

108. The Constitution of 1991 re-established the Supreme Administrative Court as one of the basic organs guaranteeing the rule of law in a democratic State. The Supreme Administrative Court became functional as of 1996. Since then, it has proved to be the institution guaranteeing the protection and defense of the rights and lawful interests of citizens, legal entities and the State itself. By 2007 the Supreme Administrative Court examined 16,961 cases and pronounced judgments on 13,777 of them.

109. Under the Administrative Procedure Code,¹⁸ 28 administrative courts have been set up since 1 March 2007 to consider first-instance complaints in respect of administrative acts. The setting up of an entire system of administrative courts raises the role, prestige and interest of administrative jurisdiction and provides guarantees for a more effective judicial defence of the rights and lawful interests of citizens against unlawful acts and actions on the part of the State administration.

110. In general, while the legal framework for human rights protection, including the rights guaranteed under the International Covenant on Civil and Political Rights, has been substantially improved in the period covered by this report, some shortcomings in the process of the practical implementation, as well as in the day-to-day interaction between authorities and citizens and among the citizens themselves do exist. Therefore, additional mechanisms have been established to address the issue.

Ombudsman of the Republic of Bulgaria

111. The institution of Ombudsman was created under the Ombudsman Act,¹⁹ passed by the National Assembly on 16 September 2003, with the mandate of being the public defender as an additional form for protection of citizens' rights and freedoms in their relations with public authorities. The position can be taken by any Bulgarian citizen having university education, of high moral integrity, who is eligible for the requirements to run and be elected as a member of the National Assembly. The Ombudsman shall be elected by the National Assembly.

112. The Ombudsman is independent in his or her activities, which are governed only by the Constitution, the laws and the international treaties ratified by the Republic of Bulgaria. The Ombudsman shall not take up any other civil service position, nor shall he or she be on the governing board of any commercial organizations or non-profit legal entities.

113. A Child Rights Council was also set up within the Ombudsman's office.

114. The Ombudsman shall make proposals and recommendations in discharge of his or her mandate aimed at restoring violated human rights, removing the reasons and conditions which create pre-requisites for violations of human rights and freedoms; the Ombudsman shall also mediate between administrative bodies and the persons concerned for correcting and removing the violations and for bringing closer their positions. Complaints to the Ombudsman may be presented by any physical person irrespective of his or her citizenship, sex, political affiliation or religion.

115. Until 31 December 2007, the Ombudsman received a total of 6 431 complaints and signals. In comparison to 2006, there was a 33.8 per cent increase. 71 per cent of the complaints were already taken care of. The remaining 29.1 per cent were under

¹⁸ State Gazette No. 30, dated 11 April 2006, in force since 12 July 2006.

¹⁹ The law was passed by the National Assembly on 9 May 2003; entered into force on 1 January, 2004; after four months, the National Assembly elected Mr. Ginou Ganev, member of the National Assembly, as the first Ombudsman of the Republic of Bulgaria.

investigation. The greatest number of complaints, 1 426, were in the region of Sofia. Next is the region of Plovdiv with 246, followed by the region of Varna – 195, the region of Pleven – 132, the region of Bourgas – 111, the region of Veliko Turnovo – 106, and the region of Rousse – 103.

116. The Ombudsman may conduct studies and present recommendations in all relevant spheres. For example, on 4 June 2008, the Ombudsman of the Republic of Bulgaria Mr. Ginyo Ganev presented his report to the National Assembly, entitled “Good Governance, People’s Rights and Administrative Organs.” The report focused on a number of problems concerning citizen rights which had provoked wide public reaction and concern. On the basis of the analysis covering the whole range of the Ombudsman’s activities in 2007, the report focused on a number of spheres which specifically required that State and municipal bodies improved their work. There was also the need to improve the normative acts and administrative practice with a view to guaranteeing fully citizens’ rights and freedoms.

117. The spheres mentioned in the Ombudsman’s report were the following:

(a) The need to create an efficient and effective national mechanism for introducing human rights standards in the practices of State and municipal bodies, established by the European Human Rights Court in Strasbourg;

(b) A new approach and a higher degree of effectiveness of the steps aimed at curbing corruption;

(c) Lack of efficient and effective guarantees to guard constitutional rights of citizens during an arrest, because of ineffective Internet communication data;

(d) Problems with the free movement of children and under-aged, in issuing passports travel permits for other countries;

(e) Lack of ineffective actions by municipal authorities in handling complaints by citizens claiming violations of the urban public order.

118. Another report focused mainly on human rights in the field of health, and the right of the child. A number of other important matters in the report included detention centres for the under-aged. A number of check-ups were carried out in the detention centre for under-aged girls in the prison in the city of Sliven, and the detention centre for under-aged boys in the town of Boichinovtsi.

119. Many check-ups were carried out on the basis of citizen complaints concerning their right for a cleaner environment.

120. Another report also dealt with problems of social services. There were constant complaints by individual citizens and apartment owners associations against companies providing heating. There were also many complaints by citizens that the “Republican Road Infrastructure” had failed to comply with specific decisions by the Supreme Administrative Court.

121. The Ombudsman concluded that State and municipal bodies and their administrations had usually taken into account the proposals addressed to them. There were, however, examples of a lack of adequate response to recommendations.

122. The Ombudsman proposed also three recommendations to fight corruption. The first was to create codes of ethics for members of the National Assembly, municipal counselors, mayors and officials in the entire administration. These codes of ethics were to create mechanisms for prevention of conflict of interests in the field of the management of public resources, and to foresee effective sanctions. The second recommendation was to envisage clear rules for unveiling and curtailing political lobbyism. The third referred to the necessity of setting up rules for financing political parties and for fair elections.

123. The above facts demonstrate that the institution of the Ombudsman has established itself as an active factor in the protection of citizens' rights, and as a proponent for improving the administrative practices as well.

National Council for Cooperation on Ethnic and Demographic Issues (NCCEDI)

124. The National Council on Ethnic and Demographic Issues (NCEDI) was set up as a State-and-public body by the Council of Ministers of the Republic of Bulgaria, by a Decree No. 449, dated 4 December 1997.

125. In December 2004, the Council of Ministers adopted another Decree, No. 333, reorganizing the NCEDI into a body for coordination and consultation, namely, the National Council for Cooperation on Ethnic and Demographic Issues (NCCEDI). Its main aim is to assist the Council of Ministers in planning and carrying out the State policy on ethnic and demographic questions.

126. There is a Commission on Integration (CI), as a body of the NCCEDI. Its task is to consult the NCCEDI on all issues of the formation and carrying out the State policy of equal integration of the Roma in society. There is also a Department on Ethnic and Demographic Issues (DEDI), assisting the NCCEDI as part of the specialized Council of Ministers Administration.

127. The creation of the NCCEDI has strengthened the capacity of various State organs engaged in preparing, consulting and monitoring the State policy on inter-ethnic relations, protection of human rights of persons belonging to ethnic, religious and linguistic minorities and their integration in society. It has also enhanced the wide participation of national non-governmental organizations in the process.

128. The above-mentioned Decree of the Council of Ministers also established a Department on Ethnic and Demographic Issues as part of the Council of Ministers' specialized administration, with the aim of assisting the formation and implementation of the State policy for integration of vulnerable persons belonging to ethnic minorities. It also prepares and applies measures and control for the implementation of the Framework Programme for Equal Integration of Roma in the Bulgarian Society.

129. The NCCEDI Chairperson is Mrs. Emel Etem (a Bulgarian citizen of Turkish origin), Deputy Prime Minister of the Republic of Bulgaria. The NCCEDI also has two Deputy Chairmen, with one of them being nominated by the non-governmental organizations.

130. The NCCEDI composition includes representatives of 13 ministries at the level of deputy ministers (Labour and Social Policy, Economy and Energy, Regional Development and Urban-Planning, Defense, Home Affairs, Finances, Foreign Affairs, Justice, Agriculture, Education and Sciences, Health, Cultural, Environment and Water Resources), six State agencies (Bulgarians Living Abroad, Child Protection, Youth and Sport, Religions, Refugees, Employment and Social Care), the National Statistical Institute Director, two of the Bulgarian Academy of Sciences directors, 28 non-governmental organizations of persons from different ethnic groups, such as Roma, Turkish, Armenian, Karakachan, Jewish, Vlah, based in Sofia, Plovdiv, Sliven, Dobrich, Asenovgrad, Targovishte, Vidin, Lom, Bankya, Burgas.

131. With a view to making the NCCEDI more effective, the Council of Ministers adopted new Rules for the Structure and Activity of the NCCEDI (Decree No. 351, dated 20 December 2006, entered into force on 9 January 2007).

132. The Rules contain significant changes in the normative regulations thus improving the conditions for effective coordination of the State policy on ethnic and demographic questions, and for consultations with non-governmental organizations. The NCCEDI

composition was enlarged to include a number of ministries which had not been represented in it before. There is also a new compulsory requirement for the executive branch bodies to conduct consultations within the NCCEDI prior to the adoption of any new legislation. These bodies are also under the obligation to prepare, implement and analyze the national strategies and programmes on ethnic and demographic questions.

133. The Commission on Roma Integration has also been updated. Its composition includes representatives from a number of ministries directly responsible for carrying out the priorities of the Decade for Roma Integration, as well as NCCEDI members from the non-governmental organizations involved with Roma integration in Bulgarian society.

134. In accordance with the Council of Ministers' Decree No. 333, mentioned above, one of the NCCEDI functions is "to prepare the participation of the Republic of Bulgaria in the international cooperation for the protection of the rights of persons belonging to national or ethnic, religious or linguistic minorities, as well as to take part in the preparation of international treaties, declarations and other instruments".

135. The NCCEDI is a body "which makes competent analyses and draft documents for the implementation of the policy of integration of ethnic minorities. NCCEDI also drafts strategic documents and proposes measures for the implementation of national and international programmes for protection against discrimination and for cohesion of society".

136. NCCEDI employs the method of widest possible consultations and participation of all parties concerned in the preparation, discussion and adoption of decisions on strategic, programme and planning documents. It also exercises ongoing monitoring of their implementation.

137. In 2006, the NCCEDI focused its efforts on the following priorities:

- Implementing the political criteria for the Republic of Bulgaria's membership in the European Union, particularly regarding the section "Defense and Integration of Minorities"
- Improving access to health care and education, as well as employment and housing conditions of persons belonging to ethnic minority groups with an emphasis on the most vulnerable citizens in social and economic field
- Preserving and developing culture, religious and linguistic identities of ethnic minority groups
- Strengthening the administrative capacity with a view to making and conducting the State policy on ethnic and demographic questions, both at central, local and municipal levels
- Improving the dialogue with civil society representatives, ensuring transparency of actions and involving a wide circle of partners at national and local levels
- Helping ensure conditions for equal treatment of all citizens of the Republic of Bulgaria and prevent any discrimination on grounds of ethnic origin

138. Since 2006 a number of agreements have been concluded with other consultative and coordinating bodies involved with ethnic minority problems, particularly with the vulnerable communities.

139. The problems of integration of persons belonging to ethnic minorities, and the Roma in particular, are the priority of the NCCEDI activities. The latter conducts consultative, coordinating, information and organizational activities aimed at implementing the Framework Programme for Equal Integration of Roma in Bulgarian Society (1999), and the

Government's Programme for European Integration, Economic Growth and Social Responsibility (2005).

140. The NCCEDI also takes an active part in the implementation of the bi-annual international project on popularizing the national anti-discrimination legislation.

141. In 2006, the NCCEDI was nominated as a national executive body for the "European Year of Equal Opportunities for All". A National Plan of Action for Protection against Discrimination for 2007 was subsequently adopted. The Plan includes the following aims and priorities for 2007:

Aims

General aim – to turn the equal treatment and opportunities for all society groups into a daily practice.

Specific aims – the Plan contains three specific aims related to combating discrimination by means of informing people of their rights and obligations, and changing their behavior:

- (a) To improve knowledge of discrimination and the motives of such behavior by making the necessary analyses;
- (b) To strengthen the capacity of combating discrimination by encouraging an exchange of information about measures taken by various institutions, State authorities, local government, and assessing their effectiveness;
- (c) To make society more aware of the imperative to combat all forms and manifestations of discrimination, and of the steps taken to protect people from unequal treatment.

Priorities

- (a) Education;
- (b) Further development of the anti-discrimination legislation and the effective practices in applying it by the judiciary and law-enforcement authorities;
- (c) Media coverage;
- (d) Information and education campaigns and thematic debates;
- (e) National data-base;
- (f) Thematic monitoring;
- (g) Commemorating the Equal Opportunities for All Year, as an initiative of the European Commission.

142. The activities of all State organs are aimed at:

- (a) First, prevention of discrimination on whatever grounds in any sphere of public life. Crucial roles in this respect are played by the Commission for Protection against Discrimination, the national Ombudsman, the courts of law, the National Assembly with its legislative and control functions;
- (b) Second, overcoming the consequences of acts of discrimination; taking effective steps in respect of certain groups of citizens who are disproportionately affected as a result of the transition to a market economy;
- (c) Third, effectively ensuring the equality between the rights of the Bulgarian citizens, granted to them by the Constitution and laws, and the opportunities for all to avail themselves of these rights.

Paragraph 3

143. Serious civil rights violations are crimes under the Penal Code. Protection against such crimes is provided ex officio. For less dangerous crimes penal action may be taken following a claim filed by the individual whose rights have been allegedly violated (e.g. in cases of slander, insult, light injury etc.).

144. There is a special chapter in the Penal Code, entitled “Crimes against the Rights of Citizens”, with sub-chapters, viz. “Crimes against National and Racial Equality” and “Crimes against Religion and Faiths” (further information relating to these provisions is provided below).

145. The Constitution sets out the responsibility of the State in cases of damages committed by unlawful acts or actions of State organs and officials. The provision of article 7 of the Constitution is explicit in this regard: “The State shall be held liable for any damages caused by illegitimate rulings or acts on the part of its agencies and officials.”

146. The Law on the Liability of the State and the Municipalities for Damage, in force from 1989, provides that the State and municipalities are responsible for damages to citizens and legal entities by unlawful acts, actions or inaction on the part of State and municipal bodies. The Act provides for (a) arrest, including detention; (b) filing accusations for committing a crime; (c) passing judgments under the Criminal Code, or imposing administrative penalties; (d) court rulings for detention or placing under medical treatment; (e) imposition of an administrative measure by a court; (f) imposing an administrative measure in cases where a court sentence has been overruled. The Law provides an effective remedy to every person to restore his/her violated rights and freedoms before a court of law under the Civil Procedure Code and under the Administrative Procedure Code involving the responsibilities of the State and municipalities for damages inflicted by their bodies and their officials.

147. Likewise, the Law on the Protection against Discrimination provides such effective remedy to every person, whose rights and freedoms have been violated.

148. The Law for Political and Civil Vindication for Individuals who have undergone Repressive Actions (from 12 September 1944 to 10 November 1989), adopted in 1991, provides guarantees for redress and compensation for all persons who were subject to political repression in that period. It includes repressions on grounds of political convictions or religious beliefs with regard to all persons who were subjected to such treatment, viz. those sentenced, illegally detained or arrested, sent to concentration camps, persons repressed for refusing to change their names, those who disappeared, were forcefully relocated or banished, sent to labour camps, expelled from schools and universities, those interned, forcefully resettled, killed and assassinated, those who perished in prison, those deprived of pensions, as well as their heirs. The Law provides for rehabilitation, unilateral compensation, right to pension, restoration of working rights, right to inherit a pension, etc. Between 1990 and 1996 about 120,000 persons were compensated. By the end of 2007, the Ministry of the Interior received 1 170 applications of Bulgarian citizens of Turkish origin requesting certificates for having been persecuted during the 1984–1989 period (for refusing to change their names).

Article 3

149. The equality of man and woman is a fundamental constitutional principle in Bulgaria. Article 6 of the Constitution guarantees freedom and equality of rights, equality before the law and no restrictions on right or privileges on grounds of race, nationality, ethnic belonging, **sex**, origin, religion, education, convictions, political affiliation, personal or social status or property status.

150. Women and men enjoy equal civil and political rights. There are no restrictions of rights based on sex.

151. No social spheres have been reserved for men or women only. There are spheres once dominated by men where nowadays women outnumber men (e.g. education). Remuneration is determined not according to sex, but according to labour contribution.

152. In particular respects women enjoy a more favourable status than men. Certain legal bans have been placed on the employment of women in specified harmful industrial processes which may affect detrimentally a woman's child-bearing functions.

153. Equality of woman and man in respect to rights and obligations in the family is guaranteed.

154. Specific rules and regulations address the issue of unbalanced participation of women and men, the respective obligations of State and municipal authorities, as well as rules for access to jobs.

National Council for Equality between Women and Men (a Council of Ministers department)

155. The National Council for Equality between Women and Men is a consultative body, entrusted to conduct cooperation and coordination among the executive bodies and non-governmental organizations on carrying out the national policy on equality between women and men. The Council is engaged in the preparation of the annual national plans aimed at encouraging equality between women and men. This involves bringing up-to-date the priorities of different ministries and departments with the government's priorities. The Council's tasks are also closely connected with increasing the awareness of society about the different issues related to equality between sexes, training in the field of protection of human rights and equal opportunities for women and men, including for managers and experts in human resources, as well as civil servants in the central and local administrations. Special attention is accorded to including the equality between sexes policy in the finalization of various policies in all spheres. The State policy guarantees prevention and elimination of discrimination on grounds of sex, equal access to the labour market and economic activities, suitable measures for joint professional and family life. Special attention is also accorded to education and healthcare, as well as violence inside the family and trafficking of individuals.

156. The National policy for equality between the sexes is carried out by means of national action plans. There is also a National Strategy to Encourage Equality between Sexes for 2009–2015. In its first report on the Millennium Goals, Bulgaria set the following aims, to be met by 2015:

- (a) Equality between sexes in the economic and social fields;
- (b) Encouraging equality in professional and family duties;
- (c) Encouraging equality between sexes in decision-making;
- (d) Eliminating violence on grounds of sex, and trafficking of people;
- (e) Changes in existing social stereotypes involving sexes in education, culture and media areas;
- (f) Encouraging equality between sexes in good-neighbourly relations and the policy of development;
- (g) Equality between sexes in the sphere of security.

157. The Employment Strategy for the period 2004–2010 is based on the priorities of the European Employment Strategy. In the Employment Strategy women are identified as a risk group in the labour market, therefore specific measures and programmes are being implemented to encourage women’s economic activities.

158. The Law on the Protection against Discrimination guarantees equality and non-discrimination to all persons — both women and men — living in the territory of the Republic of Bulgaria and under its jurisdiction. The law defines direct or indirect discrimination on grounds, inter alia, of sex. It provides protection against harassment and sexual harassment and instigation to discrimination and persecution.

Article 4

159. Article 57, paragraph 1 of the Constitution explicitly provides that the “fundamental rights shall be irrevocable”. Paragraph 3 of article 57 stipulates that in the event of the declaration of war, the proclamation of martial law, the imposition of a state of emergency, the exercise of individual civil rights may be temporarily curtailed by law, except for the rights established by articles 28, 29, 31 (1)–(3), 32 (1), and 37 (3) of the Constitution.

160. The following rights are explicitly not subject to temporary curtailment:

- (a) The right to life;
- (b) The ban on torture and cruel, inhuman and degrading treatment and on forcible assimilation;
- (c) The ban on the subjection to medical, scientific and other experiments without voluntary written consent;
- (d) The right of persons charged with committing crimes to be brought before a court within the time established by law;
- (e) The ban on the use of force for obtaining confessions of guilt and on convictions resting solely on such confessions;
- (f) The presumption of innocence;
- (g) The right to personal inviolability and its protection against infringements;
- (h) Freedom of thought, conscience and choice of religious faith or of religious or atheist persuasion.

161. Not listed explicitly as not subject to curtailment are the ban on slavery, the trade in slaves and servitude, which do not exist in Bulgaria. Likewise, the ban on imprisonment for not fulfilling a contract is not listed since Bulgarian legislation excludes that possibility altogether.

162. Similarly, the Law on Management of Crises and the Law on the Protection against Natural Disasters both provide for several temporary limitations of basic rights, as well as measures for coping with a certain situation.

163. Concerning situations of a “public emergency which threatens the life of the nation and the existence of which is officially proclaimed”, it is a question of national evaluation whether such an emergency exists. The measures required may include limitations of human rights in a situation threatening national security in the light of the provisions of article 4 of the International Covenant.

164. In times of war or marshal law the acts establishing such situations shall enumerate the normative acts which enter into force, or repeal existing ones, as provided for in article

59, paragraph 2 of the Law of Defence and the Armed Forces of the Republic of Bulgaria. In no case, however, shall basic human rights be violated.

165. The declaration of war, of martial law or state of emergency over the entire territory of the country or over part of it is in the competence of the National Assembly on the proposal of the President or the Council of Ministers (art. 84, items 10 and 12 of the Constitution). When the National Assembly is not in session, such powers are delegated to the President, however the National Assembly must be convened immediately in order to pronounce itself on the decision of the President (art. 100, para. 5 of the Constitution).

166. It will be noted that as from the date of the Covenant's entry into force in respect of Bulgaria, no state of emergency has been declared in the country and no situations have arisen that may have required suspension or curtailment of rights. In the event that such a situation would ever arise, Bulgaria would fulfil its obligations under article 4, paragraph 3, of the Covenant.

Article 5

Paragraph 1

167. In the reporting period there have been no acts carried out by the State, or a group or person in the Republic of Bulgaria, aimed at destroying the basic rights and fundamental freedoms recognized by the International Covenant on Civil and Political Rights, or with the aim of limiting or restricting them to a greater extent than is provided in the Covenant.

Paragraph 2

168. There have been no restrictions or derogations from the basic human rights and fundamental freedoms as recognized by the International Covenant and by domestic law, or by any other international legal instrument to which the Republic of Bulgaria has acceded.

Article 6

169. According to the Constitution "Everyone shall have the right to life. Any attack upon a human life shall be punished as a most severe crime" (art. 28).

170. Article 4, paragraph 2 of the Constitution stipulates that "The Republic of Bulgaria shall guarantee the life, dignity and rights of the individual and shall create conditions conducive to the free development of the individual and of civil society."

171. Death sentences were carried out in Bulgaria for the last time in November 1989. On 20 July 1990, the National Assembly introduced a moratorium on the carrying out of death sentences, and in December 1998 the death sentence was abolished completely in all circumstances (including in time of war) and excluded from the Penal Code.

172. Accordingly, in 1999 Bulgaria acceded to the Second Optional Protocol to the Covenant on Civil and Political Rights and signed and ratified Protocol No. 6 to the European Convention on Human Rights concerning the Abolition of the Death Penalty. In 2003 Bulgaria also signed and ratified Protocol No. 13 to the ECHR concerning the abolition of the death penalty in all circumstances.

173. According to the Penal Code, murder is the heaviest crime against a human being.

174. Genocide and apartheid are qualified as crimes against humanity.

175. The Republic of Bulgaria ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1974,²⁰ and the International Convention against Apartheid in Sports in 1988.²¹ Under article 5, paragraph 4, of the Constitution of the Republic of Bulgaria, these two international instruments are part of domestic law and have precedence over domestic legislative norms if the latter contravene them.

176. Section III of the Penal Code, entitled “Genocide and Apartheid against Groups of the Population”, contains the following provisions:

Article 416 (1)

“Whoever, with the purpose of annihilating entirely or partially a concrete national, ethnic, racial or religious group,

- (a) Causes death, severe bodily injury or permanent mental disorder to a person belonging to such a group;
- (b) Places the group in such living conditions which lead to its complete or partial physical extermination;
- (c) Undertakes actions aimed at obstructing childbirth in such a group;
- (d) Forcibly transfers children from one group to another,

shall be punished for committing genocide by imprisonment of ten to twenty years or by life imprisonment without parole.

(2) Whoever carries out preparation for genocide shall be punished by imprisonment of two to eight years.

(3) Whoever visibly and directly instigates genocide shall be punished by imprisonment of one to eight years.”

Article 417

“Whoever, for with the purpose of establishing or maintaining domination or systematic oppression of one racial group of people over another racial group of people,

- (a) Causes death and severe bodily injury to one or more persons of this group of people; or
- (b) Imposes living conditions of a nature causing complete or partial physical extermination of a racial group of people,

shall be punished for committing apartheid by imprisonment of ten to twenty years or life imprisonment without parole.”

Article 418

“Whoever, for the purposes under the preceding articles,

- (a) Illegally imprisons members of a racial group of people or subjects them to compulsory labour;

²⁰ Decree of the Council of State, No. 1156, dated 31 May, 1974, State Gazette No. 46, dated 14 June 1974.

²¹ 3 April 1988.

(b) Enacts measures to obstruct the participation of a racial group of people in the political, social, economic and cultural life of the country, and to premeditate the creation of conditions obstructing the full development of such a group of people, in particular, by depriving its members of the basic rights and freedoms as citizens;

(c) Enacts measures to divide the population on racial grounds by creating reservations and ghettos, to prohibit intermarriages between members of different racial groups or to expropriate legally possessed land property;

(d) Revokes basic rights and freedoms of organizations or persons who oppose the apartheid,

shall be punished by imprisonment of five to fifteen years.”

Article 419

In compliance with the preceding articles, whoever deliberately leaves his subordinate(s) to commit a crime shall be punished in accordance with the provisions under this Chapter.

177. Article 7 of the Law on Extradition and European Arrest Warrant provides that: “Extradition shall be refused: ... 8. if the legislation of the applying State provides for the offence death sentence or such has been imposed, except the applying State gives sufficient legal guarantees that the death sentence shall not be imposed, or if it had been imposed – shall not be executed or shall be replaced by a different penalty.”

Article 7

178. The Bulgarian Constitution explicitly bans torture. Article 29 states: “(1) No one shall be subjected to torture or to cruel, inhuman, or degrading treatment, or to forcible assimilation. (2) No one shall be subjected to medical, scientific, or other experimentation without his voluntary written consent.”

179. Article 30 of the Constitution proclaims the right to liberty and inviolability of the person as a fundamental right of the citizens of the Republic of Bulgaria.

180. Article 36 of the Penal Code provides that “(2) The punishment cannot aim at causing physical suffering or humiliation of the human dignity. (3) There is no death penalty in the Republic of Bulgaria.”

181. Article 37 states that:

“(1) The punishments are:

1. Life imprisonment;
- 1a. Imprisonment;
2. Probation;
3. Confiscation of available property;
4. Fine;
5. (Revoked, SG 92/02);
6. Revocation of the right to occupy definite state or public position;
7. Revocation of the right to practice a definite profession or activity;
8. (Revoked, SG 92/02);

9. Revocation of the right to receive orders, honorary titles and insignia of honour;

10. Revocation of military rank;

11. Public reprobation.

(2) Life imprisonment without alternative of the sentence as a temporary and exceptional measure is provided for the most serious crimes threatening the basis of the Republic, as well as for other dangerous deliberate crimes.”

182. Corporal punishment does not exist in Bulgarian law. Likewise, corporal punishment has been banned in schools and rejected as a correctional method in education.

183. The Republic of Bulgaria is a State party to the international human rights instruments which guarantee a comprehensive and unconditional prohibition of torture, inhuman treatment and punishment, including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. These international legal instruments are an integral part of Bulgarian legislation, by virtue of article 5, paragraph 4 of the Constitution.

184. According to article 287 of the Penal Code “A body of the authority who, within the scope of his duties, alone or through another, uses illegal compulsory means, in order to extort from an accused, witness or expert a confession, testimony or conclusion or information shall be punished by imprisonment of three to ten years and by divesting of right according to article 37, paragraph 1, items 6 and 7” (i.e. the right to hold a certain State or public office and the right to practice a certain profession or activity).

185. Acts defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment as “cruel, inhuman, or degrading treatment” have been criminalized in the Penal Code as constituent elements of the criminal offences of coercion, threat and bodily harm.

186. Procedural guarantees for the prohibition of torture or cruel inhuman or degrading treatment are contained in the provisions of the Criminal Procedure Code, the Law on the Execution of Penalties, as well as in the entire Bulgarian criminal justice legislation.

187. The Law on the Execution of Penalties explicitly provides that there shall be no physical suffering or degrading treatment inflicted upon a person while serving a prison sentence.

188. The Law on the Asylum and the Refugees provides that when determining safe countries of origin and of safe third countries, the Council of Ministers shall assess, inter alia, “the way rights and freedoms are obeyed, as provided in the Convention on protection of human rights and fundamental freedoms, in the International Covenant on Civil and Political Rights or the Convention against torture and other cruel, inhuman or degrading treatment or punishment” (art. 98, (2)).

189. Secondary legislation, too, is of particular practical importance, providing guarantees for the prohibition of torture. Article 9 of Instruction No. Iz-2451 of the Minister of the Interior of 29 December 2006 on the procedure to be followed by the police upon detention of persons at the structural units of the Ministry of Interior, on the furnishing of premises for the accommodation of detainees and the order therein (published in the State Gazette iss.9/ 26.01.2007, in force from 27 February 2007), expressly prohibits any such acts: “The actions of police authorities shall exclude the committal, provocation or toleration of any act of torture, inhuman or degrading treatment or punishment whatsoever, or any manifestation of discrimination against detainees.” Moreover, article 10 of Instruction No. Iz-2451 provides that a member of the police force, who has become

witness to the acts under article 9, shall intervene to prevent or put an end to any such act and shall report it to his superior.

190. Furthermore, the Code of Conduct of the Policeman was adopted and introduced into practice by order of the Minister of the Interior in October 2003. It is placed on the web-page of the Ministry of the Interior (www.mvr.bg).

191. The Code of Conduct contains explicit provisions aimed at preventing torture and ill-treatment.

192. Article 7 of the Law on Extradition and European Arrest Warrant provides that: "Extradition shall be refused: ... 5. if the person will be a subject of violence, torture or cruel, inhuman or humiliating penalty related with the prosecution and with the execution of the penalty as per the requirements of the international law in the applying country."

193. Concerning conditions in prisons, the Ministry of Justice has been implementing a long-term programme for repairs, reconstructions and building new detention centres with better living conditions to comply with international standards.

194. The European Committee for the Prevention of Torture made a number of recommendations resulting in immediate measures on the part of the authorities to address any shortcomings concerning providing acceptable conditions for those serving prison sentences.

195. Major construction and reconstruction was carried out in the prisons in Burgas, Pazardjik Sofia, Bobov Dol, Belene, Plovdiv, Stara Zagora, Burgas, Vratza, Pleven Lovech, Sliven with the aim to improve living conditions and to comply with international standards.

196. There is a project for the next ten years involving general reconstruction of existing prisons and new buildings.

197. Also, 42 preliminary detention centres out of a total of 88 were shut down, because of inadequate conditions for persons detained under the Criminal Procedure Code. Most detention centres now comply with international standards.

198. In February 2007, Standards for Work with Persons Serving Life Sentences were adopted.

199. On 6 February, 2006, the Minister of Justice and the Ombudsman of the Republic of Bulgaria signed a Protocol for cooperation regarding the rights of persons serving prison sentences. Under the protocol, the Ombudsman will receive full cooperation in discharging his duties, incl. supplying him with the necessary material and information, allowing him to acquaint himself with the process of serving prison sentences, detention and arrest, and to make proposals for improving the process.

200. An Agreement on the activities in defence of persons serving prison sentences, kept in detention centres, prison conditions and convoys was signed between the Ministry of Justice and the Bulgarian Helsinki Committee on 24 April, 2006. The agreement allows the Bulgarian Helsinki Committee to have access to detention centres, documentation related to arrests or serving prison sentences, taking interviews with persons under arrest or sentenced to prison terms, checking signals made by them or their relatives.

201. Concerning the provision of medical care, the Council of Ministers' Decree No. 159 of 17 July 2003 raised the level of the Ministry of Justice Health Care Centres to medical centres under article 5, paragraph 1, of the Medical Centres Act. Medical care and assistance to persons under arrest or serving prison sentences is provided by the Specialized Hospitals for Active Treatment in Sofia and Lovech, 13 medical centres attached to prisons and one by the Medical Centre for persons serving prison sentences in Sofia.

202. In prisons and detention centres there is the compulsory initial thorough medical examination, as well as subsequent periodic ones. Patients in need of treatment are hospitalized under Ordinance No. 39 of 16 November 2004 for Prophylactic Examinations and Hospitalization.

203. Medical treatment of persons detained and serving prison sentences is regulated by Ordinance No. 12/20 of 20 December 2006, issued by the Minister of Public Health and the Minister of Justice.

Article 8

204. Slavery, the trade in slaves and servitude do not exist in the Republic of Bulgaria.

205. Also, the provision of article 8 of the International Convention on Civil and Political Rights is part of domestic law and directly applicable.

206. Under article 48, paragraph 4 of the Constitution “No one shall be compelled to do forced labour.”

207. Bulgaria is a State party to, and strictly abides by the provisions of the following ILO Conventions (which pursuant to article 5, paragraph 4 of the Constitution are part of domestic legislation):

Convention No. 29 (1930) concerning Forced or Compulsory Labour Convention – ratified by Bulgaria in 1932;

Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour – ratified by Bulgaria in 2000;

Convention No. 105 (1957) concerning the Abolition of Forced Labour – ratified by Bulgaria in 1999.

208. The Penal Code provides for the right to work for pay for prisoners serving prison sentences.

209. Article 41 provides that “(1) The incurring of imprisonment shall be accompanied by a suitable, respectively paid social useful labour, which shall aim at the reforming of the convicted, as well as the creation and improvement of their professional qualification. (2) Applied, along with that, shall be other measures of reforming and education. (3) The expended labour shall be considered in reducing the term of punishment, as two work days shall be considered as three days of imprisonment.”

210. The labour of persons serving prison sentences shall not be forced or compulsory in the sense of the International Covenant on Civil and Political Rights since those persons are required to give their express voluntary consent.

211. Under the Law on the Execution of Penalties, those serving prison sentences are entitled to receive suitable jobs inside or outside the prison. The kind of work prisoners are to perform is determined by the administration taking into account a number of criteria, such as age, sex, health condition, ability to work, need to correct behaviour, professional qualification and personal interests.

212. Naturally, persons serving prison sentences are not compelled to do any kind of forced labour. Their labour in prison conditions corresponds to international and domestic legal norms.

213. Labour law provisions apply to working conditions, duration, lunch breaks etc. Prisoners work mainly in workshops, farms and factories of prisons and detention centres. They also have an opportunity to work in commercial companies, other legal entities and

individual dealers and shopkeepers, according to the rules established by the Minister of Justice. Legal entities and individual dealers and shopkeepers shall cover all expenses for healthcare and labour safety, normal living conditions and protection.

214. Beside the correctional effect, inmates may thus acquire additional professional skills. Also, Bulgarian domestic law contains the principle that an active involvement of persons serving prison sentences shall be taken into account in reducing his prison term. Two work days are calculated as three days of prison. This has prompted virtually all persons serving prison sentences to give their consent engage in labour activities, and to insist that they are enrolled in labour activities.

215. The trafficking of people is a crime. Every one who gathers, transports, hides or accepts individuals or groups of individual for the purposes of prostitution, forced labour, human organs or keeping them against their will shall be punished.

216. Measures taken to prevent and combat trafficking in human beings include:

1. International instruments, legislation and the justice system

217. Bulgaria has signed and ratified:

- The United Nations Convention against Transnational Organized Crime (signed 13 December 2000, ratified 5 December 2001)
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (signed 13 December 2000, ratified 5 December 2001)
- The Convention on the Elimination of All Forms of Discrimination against Women (signed 17 July 1980, ratified 08 February 1982)
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (signed 6 June 2000, ratified 20 September 2006)
- The Convention on the Rights of the Child (signed 31 May 1990, ratified 3 June 1991)
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (signed 8 June 1991, ratified 12 February 1992)
- ILO Convention No. 111 (1958) concerning Discrimination in respect of Employment and Occupation (ratified 22 July 1960)
- ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ratified 28 July 2000)

Domestic legislation

218. Under the Bulgarian Penal Code, since 2002 both within the borders of the country and cross-border trafficking is penalized for the purposes of “vicious practice, involuntary servitude, seizure of body organs or to be kept under compulsory submission”, as well as trafficking for the purpose of selling babies – since 2006.

Penal Code, Section IX. Trafficking of people

219. Article 159a states that:

“(1) Who gathers, transports, hides or receives individuals or groups of people in order to be used for vicious practice, involuntary servitude, seizure of body organs

or to be kept under compulsory submission regardless of their consent, shall be punished by imprisonment of one to eight years and a fine of up to eight thousand levs.

- (2) When the act under para. 1 is committed:
1. Regarding a person under eighteen years of age;
 2. By compulsion or by deceiving the person;
 3. By kidnapping or illegal deprivation of freedom;
 4. By using a state of dependence;
 5. By malfeasance;
 6. By promising, providing or obtaining benefit,

the punishment shall be imprisonment of two to ten years and a fine of up to ten thousand levs.

- (3) In case the act under para. 1 has been committed with regards to a pregnant woman with the purpose of selling the child, the punishment shall be imprisonment of three to ten years and a fine of five thousand to fifteen thousand levs”.

220. Article 159b states that: “(1) Who gathers, transports, hides or receives individuals or groups of people and transfers them through the border of the country with the purpose under article 159a, para. 1 shall be punished by imprisonment of three to eight years and a fine of up to ten thousand levs. (2) If the act under para. 1 is committed under the conditions of art. 159a, paras. 2 and 3 the punishment shall be imprisonment of five to ten years and a fine of up to fifteen thousand levs.”

221. Article 159c states that: “When the act under arts. 159a and 159b represents a dangerous recidivism or it has been committed by an errand or in fulfilment of a decision of an organised criminal group the punishment shall be imprisonment of five to fifteen years and a fine of up to twenty thousand levs, as the court can also rule confiscation of a part or of the entire property of the offender.”

222. In May 2007 the Parliament adopted amendments in the Penal Code introducing a new article 155a. By virtue of paragraph 1 of this article anyone, who for the purpose of establishing a contact with a person who is under 18 years of age, in order to perform fornication, copulation, sexual intercourse or prostitution, provides in Internet or in another way information about him/her, shall be punished by law. In view of article 155a, paragraph 2, the same punishment shall be imposed also on that person, who for the purpose of a fornication, copulation or sexual intercourse, establishes a contact with a person who is under 14 years of age, by using information provided in Internet or in another manner. The introduction of this new provision in the Penal Code can be considered a prevention measure in the misuse of Internet not only for committing the above-mentioned offense, but could in a broader sense be also be interpreted as preventive with regard to the recruitment of victims of trafficking.

Law on Combating Trafficking in Human Beings (2003)

223. In 2003, Bulgaria adopted the Law against human trafficking, which regulates the role and the relations between governmental and non-governmental organizations. The highlights of the Law are as follows:

- Focus on prevention and protection of victims especially women and children
- Cooperation between the governmental and non-governmental actors in setting up the national policy

- Setting up definitions of “reflection period” and “recovery period”
- Special protection for victims who are cooperating with police authorities
- Formalizes the relationship with the NGOs

Claims for compensation

224. Victims of trafficking in human beings have the opportunity to claim compensation under domestic legislation:

- A civil claim during the penal process
- A claim for unallowed damages under the Civil Procedure Code
- A claim for financial compensation by the State under the provisions of the Support and financial compensation of victims of Crimes Act

Victims’ protection

225. According to Bulgarian legislation, victims of trafficking in human beings can request protection under the following domestic legal acts:

- Penal Code (arts. 290 – 293, art. 144, paras. 1–3, art. 116 pt. 8)
- Penal Procedure Code (arts. 123 – 124, 141, 139, para. 7 and art. 474)
- Protection of Persons Threatened in the Process of Penalty Procedures (SG 103/23.11.2004)
- Special protection under Combating Trafficking in Human Beings Act (2003) (art. 26)

2. National action plans, strategies and national coordination mechanisms (ref. in particular paragraphs 4 and 11)

National programme for prevention and counteracting trafficking in human beings and protection of victims.

226. The programme has been developed on annual basis since 2005. Each year activities within its six sections are developed depending on the actual conditions in the country regarding human trafficking and the actual needs in the processes of prevention, victims’ assistance and reintegration. The activities are divided into the following sections:

Section I – Institutional and organization measures;

Section II – Prevention;

Section III – Training and qualification;

Section IV – Protection, rehabilitation and reintegration of victims of trafficking;

Section V – International cooperation;

Section VI – Legislative measures.

227. The National programme is proposed by the members of the National Commission and voted by the Council of Ministers. Thus the highest level of support for the implementation of the anti-trafficking efforts on national level is ensured. Each year the Commission members report on the fulfilled activities.

National Referral Mechanism for victims of trafficking

228. In order to provide access to humanitarian programmes and services for protection and reintegration to victims of human trafficking in Bulgaria National referral mechanism (NRM) for victims of trafficking have been developed.

229. The development of the Mechanism is lead by an NGO – Animus Association Foundation/La Strada Bulgaria and is supported by the National Commission for Combating Human Trafficking, the Ministry of Interior, the Social Support Agency at the Social Ministry and International Center for Migration Policy Development. As the various structures in a democratic State have different focus and different viewpoints, it is crucial that at the process of rehabilitation participate both governmental and non-governmental organizations.

230. The development of the NRM is based on the needs of the victims:

- Identification, immediate needs assessment and initial referral to relevant services, safe return
- Crisis intervention and action plan (psychological; medical; social – accommodation, food, personal belongings, cloths; legal; safety plan)
- Restitution/acquirement of civil status and issuing identity documents (official identification)
- Recovery and reflection (partnering in taking decision and providing information about the available options)
- Medical care
- Restitution/acquirement of health-insurance status
- Protection against threats by the side of the criminal net against the victim and/or her relatives and family
- Shelter
- Counselling and psychotherapy
- Legal aid
- Care for their children
- Restoration of the connection with the children, the family and the close surrounding
- Coping with rejection from the family
- Measures against re-trafficking by the traffickers
- Overcoming the stigmatization and rejection of society
- Incomes
 - Compensation (by the perpetrator, from funds for crime victims compensation)
 - Job placement
 - Humanitarian aid
 - Restoration of the social insurance status
 - Additional qualification and re-qualification

231. By the end of 2008 the first draft of the NRM will be ready for implementation.

232. The National referral mechanism will complement and incorporate to some extent the existing Coordination mechanism for referral, care and protection of repatriated Bulgarian UAM and children.

Coordination mechanism for referral, care and protection of repatriated Bulgarian UAM and children

233. On 9 November 2005 the Coordination mechanism for referral, care and protection of repatriated Bulgarian UAM and children – victims of trafficking returning from abroad was officially signed by the Chairperson of State Agency for Child Protection, by the Deputy Minister of Interior, the Deputy Minister of Labour and Social Policy and by the Deputy Executive Director of Agency for Social Assistance.

234. The development of the Coordination mechanism was initiated by State Agency for Child Protection with the co-operation of Bulgarian mission of International Organization for Migration to address the phenomenon “unaccompanied children, staying abroad”, which became of main concern for Bulgaria after the removal of visas restrictions on travelling abroad and activating migration processes. An unfavourable aspect of this phenomenon is the involvement of juveniles and minors abroad in different forms of exploitation, begging and pocket-picking.

235. The complex nature and the complicated structure of the problem impose the enforcement of a multidisciplinary and inter-institutional approach for its overcoming. As a result the responsible Bulgarian institutions joined their efforts for unifying practices and standards for working on cases of unaccompanied children as well as co-operation and due signaling for undertaking protection measures in the best interest of children.

236. With the signing of the Coordination mechanism for referral, care and protection of repatriated Bulgarian UAM and children – victims of trafficking, returning from abroad, the approach of Bulgarian institutions for undertaking coordinated actions and clear delimitation of responsibilities was unified with the purpose of efficient application of legislation for combating trafficking in persons.

237. For 2006 170 cases were referred and 102 in 2007. The decrease is explained with the possibility of free movement of people after the integration of Bulgaria into the EU.

Services for victims

Crisis centers for children victims of trafficking

238. Three crisis centers for children victims of violence and trafficking have been functioning since the beginning of 2007 – in the village of Balvan, Veliko Tarnovo District and in the towns of Pazardzhik and Dragoman. Children between 6 and 18 years of age, victims of trafficking and/ or other violence are eligible for accommodation. The crisis centers main activities include shelter provision, food and round-the-clock care for the children, healthcare and educational services, psychological support, as well as work for preparing the child reintegration in his/her biological family. The duration of stay is up to six months depending on the individual needs and the level of readiness of the child and the family for reintegration. In cases of unsuccessful reintegration process, the child is directed for placement in an institution. The centers have an overall capacity to accommodate 30 children. As of the end of 2007, the total number of children using the service was 26.

Shelters and crisis centers for adult victims of trafficking

239. According to the National Register of the physical and legal non-profit entities in Bulgaria that provides activities in the field of counteracting human trafficking in Bulgaria there are seven out of twenty-two non-governmental organizations and International

Organization of Migration that provide crisis accommodation and/or shelter for victims of trafficking. Thirteen organizations provide crisis intervention – psychological, medical and social, as well as long-term rehabilitation services.

240. There are several hotlines for children and adults victims of violence, including trafficking, in Bulgaria.

Code of Conduct for Prevention of Trafficking and Sexual Exploitation of Children in Tourism

241. One of the main achievements in the field of involving the business sector in the efforts to eliminate human trafficking is the development and implementation of Code of Conduct for Prevention of Trafficking and Sexual Exploitation of Children in Tourism.

242. The project is implemented as a common effort by Animus Association Foundation/La Strada Bulgaria, The State Agency for Child Protection, the Austrian NGO 'respect' – Institute for Integrative Tourism and development and the Organization for Security and Cooperation in Europe – Office of Economic and Environmental Activities.

243. The aim of the Code is the introduction of a new approach in combating trafficking in and sexual exploitation of children by having the travel, tourism and hospitality industry in Bulgaria involved in the anti-trafficking efforts.

244. The Bulgarian Code is part of a worldwide effort. It has been elaborated based upon the original Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism of ECPAT International, which is supported by UNICEF and the World Tourism Organization.

245. The Code of Conduct contains the six criteria to be implemented by a company that adopts the Code:

- To establish a corporate ethical policy against commercial sexual exploitation of children
- To provide preliminary and follow up training to the personnel in Bulgaria and abroad
- To introduce clauses in contracts with suppliers of tourism and travel services, insuring non-allowance of sexual exploitation of children
- To provide information to travelers by means of catalogues, brochures, films showed during the trip, web-sites., etc. developed by the company or provided by partner organizations
- To provide information to key organizations involved with the protection of children from sexual exploitation in the country and abroad
- To present yearly reports in the form of standard survey forms to the Permanent monitoring committee

246. As already mentioned above, compulsory military service was abolished in the Republic of Bulgaria.

Article 9

247. Article 30 of the Constitution provides that “(1) Everyone is entitled to personal freedom and inviolability. (2) No one shall be detained or subjected to inspection, search or any other infringement of his personal inviolability except on the conditions and in a manner established by law. (3) The state authorities shall be free to detain a citizen only in

the urgent circumstances expressly stipulated by law, and shall immediately advise the judicial authorities accordingly. The judicial authorities shall rule on the legality of a detention within the next 24 hours. (4) Everyone is entitled to legal counsel from the moment of detention or from the moment of being charged. (5) Everyone is entitled to meet his legal counsel in private. The confidentiality of such communication shall be inviolable.”

248. Article 31 of the Constitution states: “(1) Anyone charged with a crime shall be brought before a court within the time established by law. (2) No one shall be forced to plead guilty, and no one shall be convicted solely by virtue of confession. (3) A defendant shall be considered innocent until proven otherwise by a final verdict.”

249. The procedural guarantees for these constitutional rights are provided in the Law of the Ministry of the Interior, the Rules on Application of the Law of the Ministry of the Interior, and Instruction No. I3-2451 of 29 December 2006, as well as the Criminal Procedure Code, which entered into force on 1 March 2008.

250. In accordance with article 63 of the Law on the Ministry of Interior detentions or arrests are permitted under the law only in the following cases:

- If there are data that a crime has been committed
- If a person deliberately prevents the police from executing their duties, and after that person has been duly warned
- If a person shows heavy psychological deviations and hampers public order by his behavior, or risks his life as well as the lives of other persons
- If a person is a juvenile and has left his home, tutor or specialized facility where he has been placed
- If a person’s identity cannot be ascertained in such cases as provided for in article 61, paragraph 2 of the Law on the Ministry of the Interior
- If a person has deviated from serving his sentence which provides for imprisonment, or has left the place where he has been detained as a defender according to the police order or the order by the court
- If a person has been placed on an international wanted list at the request of another State in connection with his extradition, or there is an European order for his arrest
- In other cases provided for by the law

251. Since 1999 arrests and detentions are carried out under the Ministry of Justice Instruction No. 2, dated 19 April 1999. If a person is detained by the police under article 63, paragraph 1, items 1–5 of the Law of the Ministry of the Interior, that person shall not have his or her other rights restricted, limited or curtailed with the exception of the right to free movement. No one shall be detained for more than 24 hours without a court order.

252. Article 63 of the Law on the Ministry of Interior stipulates that: “... (3) When the detained person does not speak Bulgarian language, he/she shall be immediately informed of the grounds for the detention in a comprehensible for him/her language. (4) The detained person shall have the right to appeal before the court the lawfulness of the detention. The court shall pronounce on the complaint immediately. (5) From the moment of detention the person shall have the right to legal counsel. (6) For the detention the respective body shall be obliged to notify immediately the person, indicated by the detained person”.

253. The Law of the Ministry of Interior provides for an exclusive guarantee for a person under arrest to contest his arrest in court. An independent organ shall assess the legality of the arrest and shall pronounce itself immediately on the person’s plea. A person arrested

shall not be held by the police for more than 24 hours and after the expiration of this term he shall be released forthwith.

254. If the detainee is a foreign national, the Ministry of Foreign Affairs shall be immediately notified. The court, prosecutor and investigation authorities shall free any person arbitrarily arrested. The Law on Responsibilities of the State and Municipalities provides for the State responsibility regarding damages to citizens committed by investigation authorities, prosecutors and the court in cases of arbitrary arrest or detention, when these have been rescinded on grounds of lack of legitimate reasons.

255. The Rules on Application of the Law on the Ministry of Interior contain explicit provisions regarding the procedure for detaining or arresting a person. Under article 63 of the Rules the detention or arrest of any person shall be done on the strength of a written order, which shall contain the following data:

- (a) Name, title and place of work of the official issuing the order for the arrest;
- (b) Reasons for the arrest;
- (c) Data identifying the person arrested;
- (d) Limiting the rights of the person arrested under article 64 of the Law on the Ministry of Interior, as well as his right to:
 - (i) Contest his arrest in court;
 - (ii) To have a defence lawyer since the moment of his arrest;
 - (iii) To have medical aid;
 - (iv) To call and announce his arrest or detention;
 - (v) To get in touch with the consular office of the State whose citizen he is;
 - (vi) To have an interpreter in case the person does not speak Bulgarian.

256. With the amendments to the Law on the Execution of Penalties passed in 2002, the Bulgarian legal system has specific provisions concerning the accused and defendants.

257. The past practice when investigators and prosecutors could exercise control over detention has been discontinued. All issues relating to detention, degree of isolation, admission, placing in wards, moving from one ward to another, medical aid, access of officials and other persons to detainees, etc., were settled in detail under Instruction No. 13-2451 of 29 December 2006. The general rules of the Law on the Execution of Penalties in respect of persons already sentenced to imprisonment are valid in respect of persons charged with committing criminal acts and defendants unless the law stipulates otherwise.

258. Persons charged with committing criminal acts and defendants who are under arrest shall be kept in the regional detention centre where pretrial investigation is conducted. Other categories of detainees are also confined to the regional detention centres, namely:

- Those sentenced to various terms of imprisonment
- Those detained having been on a nation-wide wanted list
- Those detained under the Criminal Procedure Code for 72 hours on prosecutor's orders having been sentenced by a foreign court and waiting transfer to prison, etc.
- Those waiting to be convoyed in case the Ministry of the Interior regional departments do not provide the required conditions for temporary detention

259. Detainees are placed in custody only on the strength of a written order by a respective body determined by law. Detainees are entitled to inform immediately their

relatives of their arrest, or to declare their refusal to do so in writing. Aliens shall be promptly provided with the possibility to get in touch with their diplomatic and consular representations.

260. Improving the legal system by regulating the measures of detention and arrest in pretrial procedures resulting in amendments in the criminal legislation strengthened the principle of legality. This is a guarantee that deprivation of liberty can only be imposed on grounds of procedures established by law. This means that there can be no arbitrary arrest or detention in the Republic of Bulgaria.

261. The above-mentioned guarantees resulted in a reduction of the number of arrests or detentions in recent years. For example between 2004 and 2007 their number dropped from 32,895 to 23,896, whereas the number of persons accused and defendants in prisons and correctional facilities dropped from 1,934 to 952.

Article 10

262. The Penal Code provides as follows: Article 36 states that “(1) The punishment shall be imposed with the purpose of: 1. reform the convict toward observing the laws and the good morals, 2. preventive influence on him and eliminate the possibility of his commitment of other crime and 3. instructive and warning effect on the other members of the society. (2) The punishment cannot aim at causing physical suffering or humiliation of the human dignity. (3) There is no death penalty in the Republic of Bulgaria.”

263. Article 2 of the Law on the Execution of Penalties also states that “(2) The execution of the penalties cannot have as objective causing of physical suffering or humiliation of the human dignity of the convicted.”

264. Article 37 states that:

“(1) The punishments are:

1. Life imprisonment;
- 1a. Imprisonment;
2. Probation;
3. Confiscation of available property;
4. Fine;
5. (Revoked, SG 92/02);
6. Revocation of the right to occupy definite state or public position;
7. Revocation of the right to practice a definite profession or activity;
8. (Revoked, SG 92/02);
9. Revocation of the right to received orders, honorary titles and insignia of honour;
10. Revocation of military rank;
11. Public reprobation.

(2) Life imprisonment without alternative of the sentence as a temporary and exceptional measure is provided for the most serious crimes threatening the basis of the Republic, as well as for other dangerous deliberate crimes.”

265. Article 31 of the Constitution provides that: "... (5) Prisoners shall be kept in conditions conducive to the exercise of those of their fundamental rights which are not restricted by virtue of their sentence. (6) Prison sentences shall be served only at the facilities established by law".

266. The principle of humane treatment of persons deprived of their liberty is firmly incorporated into domestic legislation, particularly with respect to the care for the physical and psychic status of the accused and convicted persons. They receive free meals, including dietary ones in cases established by law, free clothing, shoes, and sleeping accessories; free health insurance and medical care, including access to out-of-prison medical facilities, special care for pregnant women, mothers and children of up to three years of age; equal status with workers at large in respect of working hours, extra time, rest and safety labour conditions; free education and training in a particular profession, etc.

267. The Law on the Execution of Penalties provides for the separation of men and women, juveniles, non-Bulgarian citizens, accused and defendants in one and the same case with the explicit order of a prosecutor or the court, those in custody but not rehabilitated, from the rest.

268. Moving accused and defendants from one prison or detention centre to another is done on the order of the respective prosecutor or the court. Where the urgent moving of an accused person or a person in custody to a medical centre for treatment becomes necessary, or in case where there is a threat to the safety of the accused, the moving order is issued by the chief director of the "Punishments" Chief Directorate in the Ministry of Justice, with the prosecutor or the court being notified accordingly.

269. Under article 57 of the Criminal Procedure Code the measures for detention shall be taken to prevent a defendant from going into hiding, committing a crime, or obstructing putting a prison sentence into effect. The presumption of innocence is valid for both the accused persons and defendants. They are treated as innocent until the court pronounces them guilty and metes out a sentence.

270. Unlike the convicted persons, those accused or defendants shall not be subject to the following measures:

- The Law on the Execution of Penalties shall not apply, just as the measure of depriving such persons of their liberty.
- Those accused and placed in detention centres or correctional facilities shall not be required to work. They can work provided they expressly request so. This is in line with international instruments which forbid forced labour with the exception of those cases where labour is part of the sentence. The Law on the Execution of Penalties encourages that both accused persons and defendants be enrolled in general educational courses and professional training and their inclusion in reformation and social rehabilitation activities. Such activities are not repressive, but are aimed at providing better conditions for such persons.
- Accused persons shall enjoy rights established by the law which differ from those for convicted persons. They are entitled to have visitors, to receive food, limitless correspondence without control, to contact with their defence lawyers immediately after their detention, to receive packages with clothing and other items from the list of permitted items, a stay out-doors, telephone conversations and money for personal needs, individual beds and bedding, free meals, including diet ones and medicines prescribed by a physician, personal clothes, shoes, newspapers, books, etc.

271. Juvenile offenders are subject to special provisions regarding the execution of their punishment involving deprivation of liberty. They are enrolled in general educational

courses and technical professional training along with the convicted persons. They can stay out-doors for at least two hours. If they wish to work, they can do so only for three hours without interrupting the educational courses and professional training. Increased security measures and the use of physical force and weapons with respect to juvenile convicts is permitted only in most exceptional cases.

272. Reformation and social rehabilitation work with convicted persons begins immediately after their admission into prison. These persons are placed in an entry ward where they stay from 14 days to up to a month. During this period they are under the observation of a psychologist, a pedagogue and a physician. Since 2002 individual programmes have been prepared for every new inmate based on the assessment of individual characteristics, disposition to aggressive acts or self-aggression, alcohol and drug dependence, sexual deviations, etc.; a physician's conclusion on the individual's physical and psychological health and work ability; an assessment of the need to be enrolled in general educational or technical training courses.

273. In 2006, Rules for applying the system of assessment of the risk factor in convicts were drafted by the Scientific-methodological Council, and were approved by the Minister of Justice.

274. In the past two years, 100 specialized programmes for team work were carried out with over 20 per cent of the prisoners taking part in them.

275. There is a Strategy for the Fight against Narcotics. It contains the tasks aimed at curbing the access to narcotics/drugs in prison and detention centres, and for general and individual treatment of those prisoners dependant on narcotics/drugs.

276. Detention centres house the following categories of persons:

(a) Convicted persons with prison sentences who are to appear by a court or prosecutor's order in trials, or are accused of crimes other than those for which they are serving prison sentences;

(b) Detained persons placed on the nation-wide wanted list;

(c) Persons detained by investigation authorities or a prosecutor under the Criminal Procedure Court.

277. No person shall be placed in a detention centre without a written court or prosecutor's order demanding his or her arrest.

278. Every arrested person shall have the right to inform in writing his or her family or relatives on his or her detention. If the person does not want them to be notified, he or she shall put it in a written declaration. The latter shall prevent any administrative body to notify on its own the family or relatives of the detainee in question.

279. The detainee shall be informed of his or her rights to visits, correspondence, receiving packages, and the amount of money for personal needs. Detainees, who are not Bulgarian citizens, shall be informed of their rights to contact their countries' diplomatic or consular missions. Those detainees shall be immediately provided with all possibilities to establish such contacts.

280. The accused and defendants shall be confined to prisons and detention centres by a written order of the respective prosecutor after the preparation of a concluding act by the investigation body or the judge following the submission of the indictment to court. Accused and defendants are kept separately, viz. men from women, juveniles from adults, persons holding other than Bulgarian citizenship from Bulgarian citizens, the accused from the defendants in one and the same trial on the explicit order of the prosecutor or court; persons serving prison sentences and not yet rehabilitated, from the rest.

281. In prisons and detention centres the accused and defendants are kept in separated wards from those serving prison sentences.

282. The accused and defendants in correctional facilities can also work if they so request in writing. General educational and professional training are encouraged.

283. The accused and defendants are released when the order for their arrest is rescinded or replaced by another measure by the decision of the court or by an order of the prosecutor.

284. According to Decree No. 904 on hooliganism and Rules for its implementation Ministry of the Interior facilities are reserved for persons with administrative sentences which provide for "detention in the Ministry of the Interior facilities", but in separated premises from the persons detained under the Law on the Ministry of Interior.

285. The Code of Ethics of the Ministry of the Interior civil servants contains explicit norms in its Chapter IV, entitled "Civil Servants and Detained Persons" in connection with the detention and arrest of persons by the police, which conform fully with the provisions of the International Covenant on Civil and Political Rights.

286. In addition, the Code of Ethics spells out the prerequisites for the use of force, arms and other means in compliance with the law, in cases where their use is absolutely necessary because there is a direct threat.

287. The Ministry of the Interior has set up a Permanent Commission for Human Rights and Police Ethics. There are also regional commissions for human rights and police ethics. These bodies are entrusted with the task of improving and promoting the practices of respecting and observing human rights and police ethnics in the Ministry of the Interior.

288. A number of seminars were held in 2007 on human rights and police ethics, at which, inter alia, the following problems were discussed:

- Discipline as a basic factor in preventing violations of ethical norms
- Detention of persons in the Ministry of the Interior facilities, rights and obligations
- Police and ethnic minorities
- Strategic directions for development of the "Police and Society" integration model
- Access of citizens to police structures and working with victims of crimes and violations

289. With respect to training, government institutions responsible for the prevention of torture undertake various measures for the proper training of their staff, ranging from induction and periodic training courses and seminars of varying scope and duration. The training curricula, depending on the category of trainees and the duration of the training courses, include issues of international law and human rights.

290. The norms of international legal instruments in the area of human rights are also taught in on-the-job training courses. A useful aid in this respect is the pocket handbook for police officers 'International Human Rights Standards for Law Enforcement Bodies', issued by the United Nations Centre for Human Rights.

291. Training programmes for police investigators comprise compulsory subjects dealing with the standards of international legal instruments in the area of human rights.

292. Prison staff is also trained systematically in the spirit of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. All newly appointed staff should undergo induction courses. The curriculum includes subjects such as international standards of treatment of inmates, international

standards of medical service in penitentiary institutions, social work as a guarantee for the protection of human rights of detainees, etc.

293. Specialized training sessions are conducted with prison staff to acquaint them with the standards of international instruments for the protection of human rights in penitentiary institutions and for a lawful and humane treatment of inmates. Psychologists and social workers take part in such briefings of prison security guards.

294. Periodic training courses and seminars aimed at raising the qualifications of staff members, including on matters of prevention of acts of torture, are also delivered by the management of the State Agency for Refugees.

Article 11

295. Persons failing to meet obligations arising from a contract may not be punished by imprisonment (jailing of debtors) in the Republic of Bulgaria. Bulgarian law does not provide for any such sanction in case of a failure to fulfil contractual obligation.

296. Liability in such cases may only be sought through a civil suit. The Civil Procedure Code has established the order in which such cases are settled.

Article 12

297. The rights recognized in article 12 of the Covenant are enshrined in article 35 of the Constitution of the Republic of Bulgaria, which states that “(1) Everyone shall be free to choose a place of residence and shall have the right to freedom of movement in the territory of the country and to leave the country. This right shall be restricted only by virtue of law in the name of national security, public health, and the rights and freedoms of other citizens.”

298. This constitutional provision is valid for Bulgarians and for foreign nationals residing in Bulgaria alike.

299. According to article 8 of the Law for Aliens in the Republic of Bulgaria: “(1) An alien may enter in the Republic of Bulgaria if he/she holds a valid document for travelling abroad or other substituting document as well as a visa, in case such is required. ... (3) Visas shall not be required also in the cases where the alien has durable or permanent residence card for the Republic of Bulgaria and the grounds for the granting thereof have not dropped out.”

300. Article 35 of the Law stipulates that “... (3) A foreigner who has permission for permanent stay shall be able to leave the country and to return back without a visa.”

301. All Bulgarian citizens, as well as aliens lawfully within the territory of the Republic of Bulgaria may freely leave the country on condition that they possess valid travel documents. These documents are enumerated in the Law on the Bulgarian Identity Documents.

302. Limitations on these rights are in conformity with the provision of article 12, paragraph 3 of the Covenant – they are provided by law and are necessary to protect national security, public order (ordre public), public health and morals or the rights and freedoms of others.

303. According to article 75 of the Law on the Bulgarian Identity Documents:

“It shall not be permitted to leave the country and passports and the substituting documents shall not be issued to:

1. Persons for whom there is enough evidence that by their travelling they threaten directly the security of the Republic of Bulgaria;
 2. Persons, for whom enough evidence exists that by their travelling they threaten the system of protection of the classified information representing a state secret of the Republic of Bulgaria;
 3. Persons to whom prohibition under Art. 68 of the Criminal Procedure Code, as well as sentenced persons to imprisonment till serving the imposed punishment, except the cases of Article 66 of the Penal Code;
 4. Persons who are sentenced to pay support to someone else and who have not provided it for the period of their stay abroad;
 5. Tax liable persons, for whom prohibition is required by the order of Article 182, Para 2, item 3, letter "a" and Art. 221, Para 6, item 1, letters a) and b) of the Tax-insurance Procedure Code."
304. Article 43 of the Law on the Aliens in the Republic of Bulgaria states that:
- "(1) Prohibition to leave the Republic of Bulgaria shall be imposed on a foreigner who:
1. Has been convicted by an enacted sentence and has not served the imposed imprisonment;
 2. Has liabilities over 5000 leva to corporate bodies or individuals established by court order and which have not been duly secured;
 3. Has liquid and exigible liabilities to the state of over 5000 leva, or who is a member of the control or managing bodies of corporate bodies who have liquid and exigible liabilities to the state of over 5000 leva which are not duly secured.
- (2) The measures under para. 1 shall also apply to foreigners who also have Bulgarian citizenship.
- (3) Prohibited is the leaving of the Republic of Bulgaria of a foreigner under 18 years of age having Bulgarian citizenship of whom one of the parents is Bulgarian citizen and he has not presented a written consent for his travelling abroad."
305. Paragraph 2 of article 35 of the Constitution stipulates that "Every Bulgarian citizen shall have the right to return to the country." This right may not be restricted for any reason.

Article 13

306. Article 27, paragraph 1 of the Constitution stipulates that "Aliens residing legally in the country shall not be expelled or extradited to another State against their will, except in accordance with the provisions and the procedures established by a law."
307. The reasons for expulsion and the procedure to be followed in such cases are contained in the Law on the Aliens in the Republic of Bulgaria, the Law for Entering, Residing and Leaving the Republic of Bulgaria of European Union Citizens and Members of their Families.
308. Expulsion is a compulsory administrative measure undertaken in respect of an alien. The expulsion shall be carried out by an order of the competent state authorities.
309. According to article 42 of the Law on the Aliens "(1) Expulsion of a foreigner shall be imposed when his presence in the country creates a serious threat for the national

security or for the public order. (2) By imposing the compulsory administrative measure under para 1 shall be withdrawn the right of stay of the foreigner in the Republic of Bulgaria and shall be imposed a prohibition of entering the Republic of Bulgaria.”

310. The expulsion order can be appealed in accordance with the Administrative Procedure Code.

311. In 2008, according to the Ministry of the Interior, the expulsion measure was applied in respect of 15 aliens; 728 aliens were brought back to the borders of the state, and 779 aliens were refused entry in the country.

Article 14

Paragraph 1

312. Article 121, paragraph 1 of the Constitution states that “The courts shall ensure equality and equal opportunities for all the parties in the judicial trial to present their case.”

313. According to article 9 of the Civil Procedure Code “The court shall provide the parties with an equal opportunity to exercise the provided rights. The court shall apply the law equally to everybody.”

314. Article 8 of the Administrative Procedure Code provides that “(1) All the persons, who are interested in the decision of the proceedings under this code, shall have equal procedural possibilities to participate in them for the protection of their rights and legitimate interests. (2) Within the bounds of the operative independence, under same conditions, the similar cases shall be treated equally.”

315. Likewise, the Criminal Procedure Code recognizes the principle of equality of citizens in the penal procedure. Article 11 stipulates that “(1) All citizens who participate in the penal procedure shall be equal before the law. No privileges or restrictions based on race, nationality, ethnic belonging, sex, origin, religion, education, convictions, political belonging, personal and social or property status shall be allowed. (2) The court, the prosecutor and the investigating bodies shall apply the laws precisely and equally to all citizens.”

316. Article 12 of the Code provides that “(1) The court procedure shall be competitive. (2) The parties in the court procedure shall have equal proceedings rights, except the cases as provided in this code.”

317. Article 117 of the Constitution of the Republic of Bulgaria guarantees that “...(2) The judiciary shall be independent. In the performance of their functions, all judges, court assessors, prosecutors and investigating magistrates shall be subject only to the law.” Article 119 states that: “(1) Justice shall be administered by the Supreme Court of Cassation, the Supreme Administrative Court, courts of appeal, regional courts, courts-martial and district courts. ... (3) There shall be no extraordinary courts.”

318. Article 121 of the Constitution states that “... (3) All courts shall conduct their hearings in public, unless provided otherwise by law”.

319. Likewise, article 20 of the Criminal Procedure Code provides that “Court sessions shall be public, except in the cases provided for in this Code.”

320. The court sessions and meetings shall be held in public except where the Criminal Procedure Code provides otherwise.

321. Acting at the request of any of the parties to a lawsuit, the court may consider part of the case, or take a certain action, in closed doors. The reasons for such an action shall be the following:

- Whenever public interest requires it
- Whenever protection of the life of the parties concerned, or their families, or even persons under protection, require it
- Whenever trade, production, innovation or tax secrets are involved and any such public announcement may impair their interests
- Whenever there are any other legitimate reasons

322. In such cases, the parties concerned, their defence lawyers, experts and witnesses shall be allowed in the court room on the permission of the presiding judge. There shall be no public disclosure of the proceedings of such a closed-door session. In all cases, however, court judgments are announced publicly.

Paragraph 2

323. The Constitution and the Criminal Procedure Code guarantee the rights of the defendant.

324. Article 31, paragraph 3, of the Constitution guarantees that “a defendant shall be considered innocent until proven otherwise by a final verdict”.

325. The principle of the presumption of innocence is reiterated in the Criminal Procedure Code. Article 16 states: “The accused shall be considered innocent until the conclusion of the penal proceedings with an effective sentence establishing the contrary.”

Paragraph 3

326. Article 31 of the Constitution guarantees that “(1) Anyone charged with a crime shall be brought before a court within the time established by law. (2) No one shall be forced to plead guilty, and no one shall be convicted solely by virtue of confession. ... (4) The rights of a defendant shall not be restricted beyond what is necessary for the purposes of a fair trial.”

327. Article 55, paragraph 1 of the Criminal Procedure Code stipulates the rights of the defendant. Article 55 – Rights of the accused, stipulates that “(1) The accused shall have the following rights: to learn for which crime he/she is involved in this capacity and on the base of what evidence; to give or to refuse to give explanations about the accusation; to become acquaint with the case, including with the information obtained by usage of special intelligence devices and to make the necessary extracts; to submit evidence; to participate in the penal procedure; to make requests, notes and objections; to make statements last; to appeal the acts which harm his/her rights and legitimate interests; to have a defender. The accused shall have the right of participation of his/her defender in the performance of all of the actions of investigation and other procedural actions with his/her participation, except if he/she abandons explicitly this right. (2) The accused shall also have right of last plea.”

328. The last plea of the accused shall not be subject to any further questioning, nor shall the court limit the time of the accused; the court presiding judge can only interrupt the accused if he deviates from the case itself.

329. The procedure of the criminal proceedings before the Court is set out in the Criminal Procedure Code: Article 15 – Right of defence, provides that “(1) The accused shall be entitled to defence. (2) The accused and the other persons participating in the penal procedure shall be provided with all procedural remedies necessary for the defence of their rights and legitimate interests. (3) The court, the prosecutor and the investigating bodies shall make clear to the persons under Para 2 their procedural rights and shall provide them with the possibility to exercise those rights. (4) The injured person shall be provided with the needed procedural remedies for the defence of his/her rights and legitimate interests.”

330. The defendant shall give oral explanations and directly before the respective body. He shall not be questioned by delegation or via video conference, unless he is outside the country, in which case this fact shall not hinder revealing the objective truth. The defendant shall have the right to give explanations at any moment of the investigation, or refuse to do so.

331. Article 21 of the Criminal Procedure Code states that “(1) The penal procedure shall be conducted in the Bulgarian language. (2) The persons, who do not speak Bulgarian language, may use either their native or another language. In such case, an interpreter shall be appointed.”

332. Article 22 of the Criminal Procedure Code provides that “(1) The court shall hear the cases within a reasonable term. (2) The prosecutor and the investigating bodies shall be obliged to provide the conduction of the pretrial procedure within the stipulated by this code terms.”

333. Article 122 of the Constitution provides that “(1) Citizens and legal entities shall have the right to legal counsel at all stages of a trial. (2) The procedure by which the right to legal counsel shall be practiced shall be established by law.”

334. Article 30 of the Constitution provides that “(4) Everyone shall be entitled to legal counsel from the moment of detention or from the moment of being charged. (5) Everyone shall be entitled to meet his legal counsel in private. The confidentiality of such communication shall be inviolable.”

335. The Criminal Procedure Code provides as follows: Article 97 “(1) The defence counsel may participate in the penal procedure from the moment of the detainment of the person or his/her involving in the capacity of accused. (2) The body of the pretrial procedure shall be obligated to clarify to the accused that he/she has right of defender, and shall provide opportunity immediately to connect with him/her. The body may not execute any actions of investigation and other procedural actions with the participation of the accused until does nor perform this obligation.”

336. Article 99 of the Criminal Procedure Code provides that “(1) The defence counsel shall have the following rights: to meet alone with the accuses; to become acquaint with the case and to make the needed extracts; to submit evidence; to participate in the penal procedure; to make requests, notes and objections and appeal the acts of the court and of the pretrial procedure which harm the rights and the legitimate interests of the accused. The defender shall have the right to participate in the all actions of investigation with the participation of the accused, but his/her absence shall not establish obstacle for their performance. (2) The participation of the counsel shall not be an obstacle for the accused to exercise his/her rights under Art. 55 by him/herself.”

337. A defence counsel is obligatory in the following cases:

- (a) If the person charged with a criminal offence is a juvenile;
- (b) If he suffers physical or mental disabilities, which prevent him from defending himself;
- (c) When the crime entails a sentence of no less than ten years in prison, or other heavier punishment;
- (d) When the person charge with a criminal offence does not have a command of the Bulgarian language;
- (e) When the interests of the persons charged with a criminal offence are conflicting and only one of them has a defence counsel;

(f) When there is a request under article 64 of the Criminal Procedure Code (“On a prosecutor’s proposal or the local commission to combat criminal acts by juveniles, the court may decide, having passed a judgment on the case, to replace sending the juvenile to a correction facility with another educational measure”), or the accused has been arrested;

(g) When the case is before the Supreme Court of Cassation;

(h) When the case is tried in the defendant’s absence;

(i) When the person charged with a criminal offence is not in a position to pay for defence counsel, yet wants to have such counsel, and the interests of justice demand it.

338. The defence counsel shall render legal assistance to the accused, and shall help in all his activities to explain all factual and legal provisions which are to benefit the accused, and the defence counsel shall be guided by his inner conviction based on the evidence of the case and law. He shall coordinate with the person accused the basic aspects of the defence. If the defence counsel considers that the basic aspects of the defence as proposed by the person accused are at variance with the counsel’s obligations, he shall inform the accused accordingly, and shall continue with the defence, unless he is removed from the case in accordance with the legal procedure.

339. The defence counsel shall not refuse legal advice on individual aspects of the case under the pretext that the person accused has another defence counsel.

340. The defence counsel shall have the right to meet with the defendant in private, to get acquainted with the case and to take the necessary notes, to present evidence, to take part in the trial, to make requests, observations and objections and to appeal the court actions and the investigation authorities, which harm the defendant’s rights and legitimate interests, to take part in all investigative acts with the defendant’s participation. The defence counsel’s absence shall not hamper these acts.

341. In cases of undue delay, article 368 of Criminal Procedure Code provides that “(1) If at the pretrial procedure from the involving of a definite person as accused in a serious crime more than two years have elapsed and more than one year in the rest of the cases, the accused may demand from the court to try the case. These terms shall not include the time, while the case was in the court. (2) In the cases of article 1 the accused shall submit a request to the respective first-instance court, which shall immediately demand the case.”

Evidential force of the confession of the accused

342. Article 116 states that “(1) The accusation and the sentence may not be grounded only on the confession of the accused. (2) The confession of the accused shall not discharge the respective bodies from the obligation to collect also other evidence on the case.”

Persons, who may refuse to testify

343. Article 119 states that “The accused’s spouse, ascendants, descendants, brothers and sisters and the person with whom the accused is in factual cohabitation may refuse to testify.”

344. The Law on Legal Assistance deals with criminal, civil and administrative cases before all court instances. Under this law, the types of legal aid are the following:

(a) Consultation with a view to reaching an agreement before a case is filed and/or brought to trial;

(b) Preparation of documents to be filed in court;

(c) Procedural representation;

(d) Representation under article 70 of the Law on the Ministry of Interior.

345. Each party may request legal aid which means ensuring free defence. In this case, the party shall submit a request in writing to the court which is seized of the respective lawsuit, and the latter shall act accordingly.

346. Under this law a National Bureau for Legal Assistance has been set up as an independent State legal entity as part of the Minister of Justice's structures. The National Bureau is charged with defining, coordinating and carrying out the State policy in the field of legal assistance. It is composed of five members each with a three-year mandate. The chairman and the deputy chairman are appointed by the Prime Minister acting on a decision of the Council of Ministers. A proposal to this effect is submitted to the Council of Ministers by the Minister of Justice. The other three members are nominated by the Supreme Council of Advocates. The National Bureau shall be empowered to do the following:

- (a) Conducts the general and methodical leadership in the field of legal assistance;
- (b) Prepares the National Bureau's draft budget;
- (c) Dispenses with the budget; Pays for any legal assistance;
- (d) Controls the provision of legal assistance;
- (e) Drafts bills and other normative acts in the field of legal assistance which are consequently submitted by the National Bureau Chairman to the Council of Ministers;
- (f) Analyses information necessary for the correct planning and guidance of the legal assistance system;
- (g) Popularizes the legal assistance system;
- (h) Carries out international cooperation in the field of legal assistance.

347. The National Bureau is also charged with the task of keeping a National Registrar of Legal Assistance for those lawyers who have been selected to provide legal assistance. The Registrar is published in the Internet.

348. The Law on Legal Assistance also deals with the relationship between the National Bureau for Legal Assistance and the Supreme Lawyers Council, lawyers, judicial bodies and investigation.

349. There are two sub-normative acts related to the Law on the Legal Assistance, namely, the Ordinance for payment for legal assistance and the Rules for the National Bureau for Legal Assistance.

350. According to article 142 of the Criminal Procedure Code "(1) Where the accused does not speak Bulgarian, an interpreter shall be appointed. ... (4) Where the accused is deaf or dumb, an interpreter of information shall be appointed. ..."

Paragraph 4

351. The Criminal Procedure Code provides special rules for trying cases of crimes perpetrated by minors.

Pretrial procedure

352. Article 385 states that "In cases of crimes perpetrated by minors, the pretrial procedure shall be carried out by designated investigating authorities with special training."

Restraining measures

353. Article 386 states that:

- “(1) As regards minors, the following restraining measures may be taken:
1. Surveillance by parents or trustee;
 2. Surveillance by the administration of the education establishment where the minor age person is accommodated;
 3. Surveillance by the inspector with the children’s educational unit or by a member of the local board for combating antisocial manifestations of underage or minor age persons;
 4. Detention in custody.
- (2) The restraining measure detention in custody shall be taken in exceptional cases. ...
- (4) In cases of detention, the minors shall be accommodated in suitable premises separate from the persons of age, whereas their parents or trustees and the principal of the educational establishment, when the detained person is a student, shall immediately be notified.”

354. In the cases involving parental control under items 3 and 4 above, the parents shall sign a written declaration testifying that they shall exert such control over the juveniles, keep in mind their behavior and make sure that they shall appear before the investigation authorities or the court whenever ordered to do so.

355. In carrying out an investigation of juveniles the data collected shall include the day, month and year of their birth, levels of education, the environment in which they have been living, as well as evidence showing whether the crimes they have committed are not instigated by adults.

Participation of a pedagogue or psychologist in the interrogation of minor age persons

356. Article 388 states that “Whenever necessary, a pedagogue or psychologist shall participate in the interrogation of a minor age defendant, who may ask him/her questions with the permission of the investigating authority. The pedagogue or psychologist shall have the right to become acquainted with the transcript from the interrogation and to address remarks on the accuracy and fullness of its contents.”

357. Article 389 states that “(1) The parents or trustees of a minor age defendant shall mandatory be notified about the submission of the investigation. (2) The parents or trustee of a minor age defendant shall attend the submission, if they wish to.”

358. Pursuant to article 390 of the Code the cases against minors as first instance shall be tried by one judge and two jurors, and in the cases or by two judges and three jurors. The jurors shall be teachers or educators.

359. Article 391 states that “(1) The court session in cases against minor age persons shall be held behind closed doors unless the court finds that it is in the public interest to try the case in a public session. (2) At the discretion of the court, inspectors with the children’s education unit and representatives of the education establishment where the minor age person studies, may be invited to the court session.”

Persons participating in trying the cases

360. Article 392 states that “(1) In trying cases against minors, their parents or trustees shall mandatorily be summoned. They shall have the right to participate in collecting and

verifying the evidence materials and to address requests, remarks and objections. ... (3) In cases against minor age persons, the participation of a prosecutor shall be mandatory.”

Provisional removal of a minor age person from the courtroom

361. Article 393 states that “When it is necessary to elucidate facts, which could affect negatively the minor age defendant, the court may remove him/her provisionally from the courtroom, after hearing the defence, the parents or trustee and the prosecutor.”

Execution of sentence

362. Article 395 states that “(1) When the court reprieves the execution of the punishment as regards a minor, it shall notify the respective local board for combating antisocial manifestations of underage and minors in view of organising the necessary education care. (2) When the court rules an education measure, it shall send a copy of the sentence to the respective local board. (3) The proposal of the prosecutor or the local board for combating antisocial manifestations of underage and minor age persons under Art. 64, Paragraph 2 of the Penal Code for substituting the accommodation at an education boarding school with another education measure shall be considered in a court session after enacting the sentence while summoning the minor age person and his/her defender.”

Paragraph 5

363. The Criminal Procedure Code provides for persons convicted of a crime to appeal their sentences District court judgments are subject to appeals before a higher court, whereas the latter’s judgments to the courts of appeal.

Right of appeal and of protest

364. Article 318 states that “(1) The procedure before the appellate instance shall be instituted upon a protest of the prosecutor or upon an appeal of the parties. ... (3) The defendant may appeal the sentence against all its parts. ...”

Terms and procedure of submitting the appeal and the protest

365. Article 319 states that “(1) The appeal and the protest may be submitted within fifteen-days period from the announcement of the sentence. (2) The appeal and the protest shall be submitted through the court which pronounced the sentence”.

Amendment of the first-instance sentence

366. Article 337 states that:

“(1) The appellate court may:

1. Mitigate the punishment;
2. Apply a law for same, equal or for a crime of lighter punishment;
3. Dismiss the defendant from serving of the punishment in accordance to Art. 64, para 1, or Art. 66 of the Penal Code;
4. Discharge the defendant from criminal liability in accordance to Art. 78 and 78a of the Penal Code.”

Cassation procedure

Subject of the cassation appeal

367. Article 346 states that: “Under the cassation procedure may be appealed:

1. The decisions and the new sentences of the appellate instance, except these by which the perpetrator has been discharged from criminal liability by imposing administrative punishment on the grounds of Art. 78 of the Penal Code and these under Art. 341, item 1;
2. The new sentences, rendered by the district court as an appellate instance, except these by which the perpetrator has been discharged from penal liability by imposing administrative punishment on the grounds of Art. 78a of the Penal Code;
3. The definitions of the district court and of the appellate court under Art. 306, Para 1, rendered in the cases of a new sentence;
4. The decisions of the district or the appellate court, rendered for the first time at the appellate procedure, by which the penal procedure is discontinued, suspended or its running is blocked.”

Limitations of the cassation check

368. Article 347, paragraph 1, states that: “The cassation instance shall check the sentence or the decision only at the appealed part and also with regard to the appellants, and shall pronounce within two months period.”

Cassation grounds

369. Article 348, paragraph 1, states that: “The sentence and the definition shall be subject to cancellation or amendment under cassation procedure:

1. Whereas the law is offended;
2. Whereas a significant procedural breach has been admitted;
3. Whereas the imposed penalty is obviously unjust.”

Powers of the cassation instance at rendering a decision

370. Article 354 paragraph 1, states that: “After trying the submitted appeal or protest, the cassation instance may:

1. Uphold the sentence or the decision;
2. Cancel the sentence or the decision and to discontinue or suspend the penal procedure in the stipulated by the law cases, and in the case of Art. 24, Para 1, item 1 – to acquit the defendant;
3. To amend the sentence or the decision;
4. To cancel the sentence or the decision – as whole or partially, and to remand the case for a new trying.”

Paragraph 6

371. Compensation in cases of miscarriage of justice may be obtained under the Law on the Liability of the State and the Municipalities for Damage.

372. Article 2 of the Law provides that:

“(1) The state shall be liable for damages inflicted on citizen by the Investigation, the Prosecution and the Court authorities following unlawful:

1. Detention, including when taken as punitive measure, if later overruled because of lack of legal grounds;
 2. Indictment of committing a crime if the person is later acquitted or if the criminal prosecution is suspended because of the fact that the act is not committed by the person accused or the act is not a crime or because of the fact that the persecution has begun after the prescription period has elapsed or following amnesty;
 3. Conviction under the Criminal Code or imposition of administrative penalty if the person is later acquitted or the administrative penalty is overruled;
 4. Imposition of compulsory accommodation and medical treatment or compulsory medical measures by the court, if the court’s decision is later overruled because of lack of legal grounds;
 5. Imposition of administrative measures by the court if the court decision is later overruled;
 6. Execution of the punishment imposed beyond the determined terms or scope;
 7. Use of special intelligence facilities.
- (2) The claims referred to in para. 1 shall be considered under the order established in the Civil Procedure Code.”

Article 15

373. Article 5 paragraph 3 of the Constitution enshrines the principle that “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time it was committed.”

374. Article 9 paragraph 1 of the Penal Code defines a crime as “the socially dangerous act (activity or inactivity) which has been committed by delinquency and declared by the law as punishable”.

375. Article 2 of the Penal Code provides that “(1) Applied for each crime shall be the law which has been in force at the time of its perpetration. (2) If, until the enactment of the verdict different laws follow applied shall be the law which is most favourable for the perpetrator.”

376. Article 35 of the Penal Code stipulates: “(1) The criminal responsibility is personal. (2) Punishment can be imposed only on a person who has committed a crime stipulated by the law. (3) The punishment shall be adequate to the crime. (4) Punishment for a crime shall be imposed only by the established courts.”

377. Article 6 “(1) The Penal Code shall also apply regarding foreigners who have committed crime abroad against the peace and mankind, thus affecting the interests of another country or foreign citizens.”

Article 16

378. In Bulgaria, recognition as a person before the law is an inviolable rule. Every individual acquires recognition, i.e. the ability to be bearer of rights and obligations, from

the moment of his birth. On the grounds of recognition the law establishes the ability of the individual to conduct legal actions.

379. The Law on the Persons and Family states that:

Article 1: "Every person, from the moment of his birth shall acquire the capacity of being bearer of rights and obligations."

Article 2: "With the accomplishment of 18 years of age the persons shall attain their majority and completely able, through their activities, to acquire rights and assume obligations."

Recognition may not be revoked or withdrawn even for minors or the mentally ill. Their activity, however, may be restricted.

380. Bulgarian law recognizes the principle of *conceptus pro jam nato habetur*, i.e. the individual exists from the moment of conception and may bear the right to inherit (Art. 2 of the Law on the Inheritance).

Article 17

381. The Constitution enshrines the principle of inviolability of citizens' privacy, home, correspondence and other mail and dispatches as follows:

Article 32 states that: "(1) The privacy of citizens shall be inviolable. Everyone shall be entitled to protection against any unlawful interference in his private or family affairs and against encroachments on his honour, dignity and reputation. (2) No one shall be followed, photographed, filmed, recorded or subjected to any other similar activity without his knowledge or despite his express disapproval, except when such actions are permitted by law."

Article 33 states that: "(1) The home shall be inviolable. No one shall enter or stay inside a home without its occupant's consent, except in the cases expressly stipulated by law. (2) Entry or stay inside a home without the consent of its occupant or without the judicial authorities' permission shall be allowed only for the purposes of preventing an immediately impending crime or a crime in progress, for the capture of a criminal, or in extreme necessity."

Article 34 states that: "(1) The freedom and confidentiality of correspondence and all other communications shall be inviolable. (2) Exceptions to this provision shall be allowed only with the permission of the judicial authorities for the purpose of discovering or preventing a grave crime."

382. Article 14 of the Constitution provides that "The family, motherhood and children shall enjoy the protection of the State and society."

383. The Penal Code contains specific provisions concerning offences against the person.

Homicide

384. Article 115 states that "Who deliberately kills somebody shall be punished for homicide by imprisonment from ten to twenty years."

Bodily harm

385. Article 128 states that "(1) Who inflicts on somebody else a serious bodily harm shall be punished by imprisonment of three to ten years."

Insult and Libel

386. Article 146 states that “(1) Who says or accomplishes something humiliating the honour or the dignity of another in his presence shall be punished for insult by a fine of one thousand to three thousand levs. In this case the court can also impose punishment of public reprobation. (2) If the insulted has responded immediately by an insult the court can release both of them from punishment.”

387. Article 147 states that “(1) Who divulges an ignominious circumstance regarding another or fastens a crime on him shall be punished for libel by a fine of three thousand to seven thousand levs and by public reprobation. (2) The perpetrator shall not be punished if the genuineness of the divulged circumstances or of the fastened crime is proven.”

388. Article 148 states that:

“(1) For insult:

1. For an insult in public;
2. Circulated through a printed matter or in any other way;
3. Of an official or a representative of the public during or on occasion of his duty or functions and by an official or representative of the public during or on occasion of fulfilment of his duty or function;
4. The punishment shall be a fine of three thousand to ten thousand levs and public reprobation.

(2) For a libel committed under the conditions of the preceding para, as well as for a libel as a result of which grave circumstances have occurred the punishment shall be a fine of five thousand levs to fifteen thousand levs and public reprobation.

(3) Applied in the cases under para 1, item 1 can be para 2 of art. 146.”

389. Article 148a states that “Who divulges verbally, through printed matter or in any other way, data, circumstances or assertions regarding another, based on illegally acquired information from the archives of the Ministry of Interior, shall be punished by a fine of five thousand to twenty thousand levs.”

Infringing the inviolability of a home, premises or vehicle

390. Article 170 states that “(1) Who enters a home of another by using force, threat, subterfuge, legerdemain, misuse of power or special technical devices shall be punished by imprisonment of up to three years or by corrective labour for up to six months. ... (4) Who stays illegally in another’s home despite of the explicit invitation to leave it shall be punished by imprisonment of up to one year”.

Infringing the inviolability of the correspondence

391. Article 171 states that (1) “Who illegally: 1. Opens, forges, hides or destroys another’s letter, telegram, sealed papers, package or the like; 2. Takes another’s, although opened, letter or telegram with the purpose of learning their contents or, with the same purpose, submit to somebody else another’s letter or telegram, shall be punished by imprisonment of up to one year or by a fine of one hundred to three hundred levs. 3. Learns an announcement not addressed to him, sent by electronic means or diverts such an announcement from its addressee. (2) If the act is committed by an official who has used his official position the punishment shall be imprisonment of up to two years, and the court can also rule revoking of a right according to art. 37, para 1, item 6. (3) Who, by using special technical devices, illegally learns a message not addressed to him, transmitted by a telephone, telegraph, through a computer network or other telecommunication device, shall

be punished by imprisonment of up to two years. (4) When the act referred to in para 3 has been committed from mercenary motives or considerable damages have been caused, the punishment shall be imprisonment of up to three years and a fine of up to five thousand levs.”

392. The exceptions concerning personal correspondence and other communications are only in such cases where serious crimes are to be uncovered or prevented with the permission the court.

393. Article 71 of the Law on the Ministry of Interior provides that:

“(1) The police bodies may carry out inspections in premises without the consent of the owner or the inhabitant, or in their absence, only when:

1. Immediately impending or commenced severe crime must be prevented;
2. There is information that a person who has committed severe crime is hiding in the premises;
3. It is necessary to render urgent aid to persons, whose life, health or personal freedom are endangered, or other cases of ultimate necessity are present.”

394. Article 72 of the Law provides that:

“(1) The police bodies may use physical force and auxiliary devices in fulfilment of their official obligations only if they may not be carried out otherwise for:

1. Counteraction or refusal to fulfil legal order;
2. Detention of offender who does not obey or resists a police body;
3. Escorting a person or in case of attempt to escape or take his/her life or the life and the health of other persons;
4. Rendering assistance to other state bodies or officials, including the European commission supervisors, who are illegally obstructed to fulfil their duties;
5. Attacks on citizens and police bodies;
6. Release of hostages;
7. Group violations of the public peace;
8. Attacks on buildings, premises, installations and vehicles;
9. Release of illegally occupied sites, if so ordered by a competent body.

(3) The order of using auxiliary devices shall be determined by an ordinance of the Minister of Interior.”

395. Article 73 of the Law provides that: “(1) Physical force and auxiliary devices shall be used upon warning, except for the cases of sudden attack and release of hostages. (2) The use of physical force and auxiliary devices shall be complied with the concrete circumstances, the nature of violation of the public peace and the personality of the offender. (3) In using physical force and auxiliary devices the police bodies shall be obliged, if possible, to protect the health and take all possible measures for protection of the life of the persons against whom they are directed. (4) The use of physical force and auxiliary devices shall be stopped immediately after achieving the purpose of the applied measure. (5) Prohibited shall be the use of physical force and auxiliary devices on obviously underage persons and pregnant women. The prohibition shall not apply regarding cases of mass riots, when all other possibilities are exhausted.”

396. Article 157 of the Law stipulates: “(1) Prohibited shall be the gathering of information about the citizens solely by racial indication or ethnic origin, for political, religious and philosophic convictions, membership in political parties, organisations, associations of religious, philosophic, political or trade union purposes, as well as regarding the health or their sexual life. (2) If, in exercising the right of access of the natural person data for a third person may be disclosed, the administrator of personal data shall be obliged to submit to the respective natural person access to the part of them regarding him/her only. (3) Prohibited shall be the submission of information to state bodies, organisations, legal entities and citizens by the employees of MI, except by the order stipulated by the law.”

397. Article 21, paragraph 5, of the Law for Protection of the Personal Data, provides as follows:

- “(1) It is forbidden to process personal data which
1. Reveal racial or ethnic origin;
 2. Reveal political, religious or philosophical convictions, membership in political parties or organizations, associations with religious, philosophical, political or trade union purposes;
 3. Refer to health, sex life or human genome.
- (2) Paragraph 1 shall not be applied in the following cases:
1. When processing of data is necessary for the purposes of exercise of specific rights and obligations of the administrator in charge of the field of labour legislation;
 2. When a person to whom these personal data refer has given explicitly his or her consent to be processed, unless there is a specific law which provides otherwise;
 3. When processing of personal data is necessary for the protection of the life and health of the person to which the data refer, or to another person whose physical condition does not allow him or her to give their consent, or when there are legal obstacles for processing of personal data;
 4. The processing shall be carried out by a non-profit organization, including political, philosophical, religious or trade union one, provided that:
 - (a) The processing is connected exclusively with members of the organization, or with persons who maintain regular contact with the organization itself in connection with its purposes;
 - (b) The data shall not be revealed to a third party or parties without the consent of the physical person to which they refer;
 5. The processing shall apply to data publicly announced by the physical person, or which are necessary for establishing, exercise or defence of rights in a court of law;
 6. The processing is needed for the purposes of preventive medicine, medical diagnostics, healthcare services, provided the data are processed by a medical expert who is obliged by law to keep professional secrets, or by another person who is also obliged in a similar manner;
 7. The processing shall be carried out exclusively for journalistic work, literary or artistic expression in as much as it does not infringe on the right of privacy of the person to whom the data refer. If the data refer to racial or ethnic origin, political, religious or philosophical convictions, membership in political

parties, organizations, associations with religious, philosophical, political or trade union purposes, as well as personal data concerning health or sexual life, the processing of such data shall be carried out only with the explicit written consent of the physical person concerned.”

398. The Law on the Execution of Penalties entitles persons serving prison sentences to present pleas and requests which shall be referred to the respective authorities immediately. Pleas and requests sent in closed envelopes and addressed to the National Assembly, the President of the Republic, the Council of Ministers, the Ministry of Justice, the Ministry of the Interior, the Prosecutor’s Office, the Court, the investigation authorities, and the United Nations Human Rights bodies and those of the Council of Europe shall not be subject to any kind of verification by prison and correction facilities administration.

399. Persons serving prison sentences are entitled to maintain correspondence with the representative bodies of any political party in the country, committees, associations and public organizations. They are entitled to write to mass media and to present their personal and public problems for discussion.

400. Interference in the privacy, family and home of persons serving prison sentences is allowed only in exceptional cases based on the law. Such persons are entitled to the privacy of their correspondence, with no limits to the number of letters they receive or send. There are exceptions in only two cases, namely:

- When the correspondence is subject to verification by the prison administration when the contents of the correspondence requires it to be withheld; in such cases, the social activity inspector notifies the prisoner and attaches his letter to his dossier
- When the prison chief warden decides that visits by certain persons exert negative influence on the prisoner; in such cases, the prison chief warden issues a motivated written order, which shall not apply in respect of the immediate relatives of the prisoner, such as wife, brothers and sisters

Article 18

401. Article 13 of the Constitution provides that “(1) Practicing of any religion is free. (2) Religious institutions shall be separate from the state. (3) Eastern Orthodox Christianity is considered the traditional religion in the Republic of Bulgaria. (4) Religious institutions and communities, as well as religious beliefs, shall not be used for political ends.”

402. Article 37 of the Constitution stipulates that “(1) The freedom of conscience and thought, and the choice of religion and of religious or atheistic views are inviolable. The state shall assist the maintenance of tolerance and respect among the believers from different denominations, and among believers and non-believers. (2) The freedom of conscience and religion shall not be practiced to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others.”

403. Article 2 of the Law on Religions, 2002, states that: “(1) The right to religion shall be basic, absolute, subjective, personal and inviolable. (2) The right to religion shall include the right of everybody to form freely his religious beliefs as well as to choose, change and confess – respectively practice – freely his religion, individually or collectively, publicly or privately, through divine service, education, ceremonies and rituals.”

404. Article 3 of the Law provides that “(1) Nobody can be persecuted or restricted in his rights due to religious beliefs. Inadmissible shall be restrictions or privileges, based on affiliation or refusal of affiliation with a religion. (2) The religious beliefs shall be not ground for refusal of fulfilment of the obligations, established in the Constitution or the law.”

405. Article 4 of the Law states that “(1) The religions shall be free and equal. The religious institutions shall be separated from the state. (2) Inadmissible shall be state interference in the internal organisation of the religious communities and the religious institutions. (3) The state shall ensure conditions for free and unhindered exercising of the right to religion, co-operating for maintaining of tolerance and respect between the believers from different religions, as well as between believers and non believers. (4) Discrimination on religious basis shall not be admitted.”

406. Article 5 of the Law provides that “(1) The right to religion shall be exercised through formation and expression of religious belief, creating or participation in religious community, organising of institution of the community, implementing religious education and training through dissemination of the respective conviction verbally, with publications, with electronic media, in the form of lectures, seminars, courses, programmes etc. (2) The religious conviction can be expressed through implementing of respective divine services, rituals and customs. (3) The religious conviction shall be expressed privately when it is implemented by a member or members of the religious community in the presence only of persons, who belong to it, and publicly – when its expression can become accessible also for people, not belonging to the respective religious community.”

407. Article 6 of the Law states that:

“(1) The right to religion shall include also the following rights:

1. To be created and maintained religious communities and institutions with structure and way of representation, which are appropriate according to the free conviction of their members;

2. To be established and maintained places for divine service or religious meetings;

3. To be created and maintained appropriate charity or humanitarian institutions;

4. To be produced, acquired and used, according to the extent, compliant to the divine service objectives, the necessary materials and subjects for the ceremonies and the customs of a religion or belief;

5. To be written, published and disseminated religious publications;

6. To be given and received religious education in a language of personal choice;

7. To be preached or taught one religion or belief at places, appropriate according to the communities and the institutions for this purpose, as well a to be created and maintained appropriate according to the communities and the institutions educational establishments, observing the legal requirements;

8. To be collected and received voluntary financial and other grants and donations from separate persons and institutions;

9. To be observed the days for rest and to be respected the religious holidays;

10. To be established and maintained connections in the country and abroad with persons and communities on religious and belief issues.

(2) The parents, the guardians and the trustees shall have right to ensure religious education and training to their children in compliance with their own convictions.”

408. Article 7 of the Law stipulates that “(1) The freedom of religion cannot be directed against the national security, the public order, the public health and the morale or against

the rights and the liberties of other persons. (2) The religious communities and institutions, as well as belief convictions, cannot be used for political objectives. (3) The right to religion can not be restricted except in the cases of para 1 and 2. (4) The rights and the liberties of the persons, members of a religious community, cannot be restricted by the internal rules, rituals and ceremonies of this community or institution. (5) The religious communities and institutions cannot include in their activity minor persons except with the explicit consent of their parents or guardians. The under age persons can be included in the activity of the religious communities and institutions except if there is explicit disagreement of their parents or trustees.”

409. Article 8 of the Law provides that:

“(1) The right to religion can be restricted if the requirements of art. 7 are violated by:

1. Stopping the dissemination of a printed publication;
2. Stopping of publishing activity;
3. Restriction of the public appearances;
4. Revoking the registration of an education, health or social establishment;
5. Ceasing of the activity of the corporate body for a term up to 6 months;
6. Revoking of the registration of the corporate body of the religion.

(2) The procedure for restricting shall be constituted upon request of the interested persons or of the prosecutor. The case shall be considered by claim order at the Sofia city court.

(3) The decision of the Sofia city court shall be subject to appeal by the general order.”

410. Article 9 of the Law states that “(1) There shall be no preaching and dissemination of religious intolerance, nor instigation to discrimination, hostility or violence on grounds of religion. (2) There shall be no discrimination of any religion or religious community on any grounds, including the fact that they have recently appeared or represent religious communities who may be subject to hostility on the part of another religious community.”

411. Article 10 of the Law stipulates that “The state shall ensure conditions for free and unimpeded exercise of the right to religion. The state shall assist the maintenance of tolerance and respect among believers belonging to different religious communities, as well as between believers and non-believers.”

412. The Penal Code (PC) provides protection of these rights. Article 162, paragraph 2 states that: “Who applies violence against another or damages his property because of his nationality, race, religion or his political conviction shall be punished by imprisonment of up to four years and by fine from five thousand to ten thousand levs and also by public reprobation.”

413. Article 164 of the PC states that “(1) Who propagates hatred on religious grounds through speeches, press or other means for mass information, through electronic information systems or in any other way shall be punished by imprisonment of up to four years or by probation, as well as by fine from five thousand to ten thousand levs. (2) Whoever desecrates, destroys or damages a religious temple, a home of prayer, sanctuary or a building adjacent to them, their symbols or gravestones shall be punished by

imprisonment of up to three years or by probation, as well as by a fine from three thousand to ten thousand levs.”

414. Article 165 of the PC stipulates: “(1) Who, by force or threat obstructs the citizens to profess their faith or carry out their rituals and services which do not violate the laws of the country, the public peace and the good morals shall be punished by imprisonment of up to one year. (2) The same punishment shall be imposed on those who, in the same way, compels another to participate in religious rituals and services. (3) For the acts under art. 163 committed against groups of the population, individual citizens or their property in connection with their religious belonging shall apply the punishments stipulated by it.”

415. Article 166 of the PC stipulates: “Who forms a political organisation on religious grounds or who, through speeches, publications, act or in any other way, uses the church or the religion for propaganda against the state authority or its activities shall be punished by imprisonment of up to three years, unless he is a subject to a more serious punishment.”

416. It would be mentioned that there is a great number of churches, mosques, temples, etc. in the Republic of Bulgaria, which belong to the Bulgarian Orthodox Church, the Catholic Church, the Protestant denominations, Mosques, Synagogues, etc.

Article 19

417. The Constitution contains a number of provisions which guarantee the rights recognized in article 19 of the Covenant.

418. Article 39 of the Constitution states that “(1) Everyone is entitled to express an opinion or to publicize it through words, written or oral, sound, or image, or in any other way. (2) This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.”

419. Article 40, paragraph 1 stipulates that “The press and the other mass information media are free and shall not be subjected to censorship.”

420. Article 41, paragraph 1 states that “Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality.”

421. In defence of public interest, article 39, paragraph 2, specifies that “This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone.”

422. Article 40, paragraph 2, states that “An injunction on or a confiscation of printed matter or another information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of violence against anyone. An injunction suspension shall lose force if not followed by a confiscation within 24 hours.”

423. The second sentence of article 41, paragraph 1, reads as follows: “...This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health, and morality.”

424. In addition, the Law for the Radio and Television provides for the above-mentioned guarantees to conform to the Constitution.

425. Article 10, paragraph 1 of the Law guarantees the following principles:
1. The right to free expression of opinion;
 2. The right to information;
 3. Protection of the secrecy of sources of information;
 4. Protection of personal privacy;
 5. Broadcasts which suggest intolerance among citizens shall not be tolerated;
 6. Broadcasts which contradict good behaviour and morals, particularly if they contain pornographic materials, hailing or exonerating cruelty or violence, or incite hatred based on race, sex, religion or national origin shall not be allowed;
 7. The right to reply;
 8. Copyright and neighbouring rights in broadcasts and programmes.
426. Article 11 of the Law guarantees free expression of every opinion in radio and television broadcasts, as well as the freedom of journalists in their efforts to gather and present information.
427. Articles 14 (3) and 18 regulate the right of everyone if feeling offended by a radio or television broadcast to demand and obtain a copy of the said broadcast, and to use their right of reply which shall be subsequently provided.
428. Article 16, paragraph 1, prohibits radio and television operators to include information in their broadcast about the personal life of citizens without their explicit consent. Personal life shall mean family life, health and sexual aspects.
429. In its Opinion No. 7, dated 4 June 1996, the Constitutional Court of the Republic of Bulgaria referred to articles 39, 40 and 41 of the Constitution as reaffirming the basic human rights of the citizens to express freely their opinions, to disseminate them and to be entitled to seek, receive and disseminate information. The said provisions protect the right of the individual to free expression and dignity as an equal partner in the social community. Certain restrictions of the exercise of these rights shall be deemed admissible in cases where the protection of other, equally protected constitutional rights and interests is necessitated.
430. The Council for Electronic Media (CEM) in the Republic of Bulgaria has issued 22 punitive decisions involving radio and television operators for violations of the Law for the Radio and Television. 20 of them involve violations of article 17, paragraph 2, for broadcasts insinuating national, political, ethnic, religious and racial intolerance, hailing or installing cruelty or violence, or for broadcast aimed at harming the physical, mental and moral upbringing of minors and under-aged.
431. Acting under its powers, in particular article 126 (b) of the Law on the Radio and Television, the CEM took a decision No. 15-00-59, dated 6 November 2003, revoking the registration of Union Television Ltd, broadcasting a cable and satellite "DEN" (DAY) programme for systematic violations of the Law on the Radio and Television principles.
432. It should also be noted that foreign newspapers and periodicals are freely imported and distributed in throughout the country.

Article 20

Paragraph 1

433. The Penal Code explicitly criminalizes any propaganda of war. Thus article 407 states that “Who carries out, in any way whatsoever, propaganda of war shall be punished by imprisonment of up to eight years.”

434. According to article 408 of the PC states: “Who, directly or indirectly, through publications, speeches, radio or in any other way aims at provoking armed attack by one country to another shall be punished for war instigation by imprisonment of three to ten years.”

Paragraph 2

435. Instigation of hatred on national, racial or ethnic grounds, and the preaching of discrimination, hostility and violence are crimes. The establishment of or participation in groups pursuing the goals set out above is a qualifying element leading to more severe penalties.

436. Article 162 of the Penal Code provides that: “(1) Who, through speech, press or other means for mass information, through electronic information systems or in any other way, propagates or incites racial, national or ethnic hostility or hatred or racial discrimination shall be punished by imprisonment of up to four years and by fine from five thousand to ten thousand levs and by public reprobation. (2) Who applies violence against another or damages his property because of his nationality, race, religion or his political conviction shall be punished by imprisonment of up to four years and by fine from five thousand to ten thousand levs and also by public reprobation. (3) Who forms or heads an organisation or a group whose goal is the perpetration of the acts under Para 1 and 2 or systematically allows the commitment of such acts shall be punished by imprisonment of one to six years and by fine from ten thousand to thirty thousand levs and also by public reprobation. (4) A member of such an organisation or a group shall be punished by imprisonment of up to three years and by a public reprobation.”

437. Article 163 of the Penal Code stipulates that:

“(1) The persons who participate in a crowd for attack on groups of the population, individual citizens or their property in connection with their national, ethnical or racial belonging shall be punished:

1. The instigators and leaders – by imprisonment of up to five years;
 2. All the rest – by imprisonment of up to one year or corrective labour.
- (2) If the crowd or some of the participants are armed the punishment shall be:
1. For the instigators and leaders – imprisonment of one to six years;
 2. For all the rest – imprisonment of up to three years.
- (3) If an attack is carried out and as a result of it a serious bodily harm or death has followed the instigators and the leaders shall be punished by imprisonment of three to fifteen years and all the rest – by imprisonment of up to five years, unless they are subject to a more serious punishment.”

438. Article 3, paragraph 1 of the Law on the Protection against Discrimination states: “(1) This Act shall protect all individuals on the territory of the Republic of Bulgaria from discrimination.”

439. Article 4, paragraph 1 of the Law provides that “There shall be no direct or indirect discrimination on grounds of sex, race, extraction, ethnicity, nationality, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, family status, property status, or any other grounds provided for by law or international treaties to which the Republic of Bulgaria is a party.”

440. The activities of the Commission for Protection against Discrimination (see also information on article 2 above) have been focused on combating discrimination and hostility. The Commission sits in panels:

Files on “Ethnic and Racial Grounds”, “Religion and Faith”, and “Political Affiliation”

1. Panels and meetings

<i>No. Panels</i>					<i>2009</i>
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008 (1 January–2 April)</i>	
1. Panel one (ethnic and racial)	6	37	39	25	1
2. Panel three (religion and faith)	No details	2	No details	3	No details
3. Political affiliation	No details	No details	3	1	2

2. Multiple discrimination

<i>No. Panels</i>					<i>2009</i>
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008 (1 January–2 April)</i>	
1. A five-member panel on ethnic and racial grounds	-	6	11	20	5
2. A five-member panel on religion and faith	No details	1	1	2	2
3. A five-member panel on political affiliation	No details	4	1	10	4

3. Analyses on the following grounds:

3.1 “Ethnic affiliation”

<i>No. Panels</i>					<i>2009</i>
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008 (1 January–2 April)</i>	
1. “Ethnic and Racial” “Hate Speech”, newspapers, electronic media, statements, speeches	No details	2	17	4	No details

441. In comparison with 2007, when there were 57 files on ‘Ethnic grounds’, in 2008 there was a fifty per cent reduction in the number of those files. A comparative analysis offers a number of conclusions: complaints on grounds of ethnic discrimination in the fields of services and education dropped in numbers when compared to the increased number of complaints in the fields of electronic and mass media, and public statements as well. They concern the so-called unacceptable behavior, made verbal, which either aims at or results in harming dignity and creates offensive, hostile and even threatening environment in the meaning of article 1, paragraph 1, of the Additional Provisions of the Law on the Protection against Discrimination. In this respect, the Commission for Protection against Discrimination considers that the mass media are under the obligation to obey the law. The Commission’s practice reveals an increase in the number of such complaints by Roma individuals and their organizations. Judging by the “Ethnic Affiliation” data analyses, there is a sizeable increase of complaints coupled with complaints on other grounds, including multiple discrimination.

3.2 “Religion and Faith”

<i>No. Panels</i>	<i>2009</i>				
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008 (1 January–2 April)</i>	
1. Religion	2	1	2	1	1
2. Religion and faith	1	2	No details	3	No details
3. Religious intolerance	No details	No details	No details	No details	No details

442. The Commission for the Protection against Discrimination has analyzed the complaints on these two grounds and has come to the conclusion that there are no religious or related tensions among the public. The public at large in Bulgaria can be characterized as being tolerant and respectful towards different religions and faiths which are freely practiced and followed. There are isolated complaints on grounds of religion and faith in combination with complaints on other grounds.

3.3 “Political Affiliation”

<i>No. Panels</i>	<i>2009</i>				
	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008 (1 January–2 April)</i>	
1. Political affiliation	No details	4	4	12	6

443. Complaints on the above ground are usually coupled with complaints on grounds of social status or the right to labour. This is a symptom of uneasiness in the development of a democratic society, including respect for the principle of political neutrality. The first complaints were filed in 2006. Three cases were considered in 2007, and only one in 2008.

Article 21

444. According to the Constitution, the Bulgarian citizens are entitled to the right to peaceful assembly. Article 43 stipulates that “(1) Citizens shall have the right to peaceful and unarmed assembly for meetings and manifestations; (2) The procedure for the organizing and holding of meetings and manifestations shall be established by law; (3) No notice to the municipal authorities shall be required for meetings held indoors.”

445. The Law on Assemblies, Meetings and Manifestations explicitly stipulates that the citizens shall not be persecuted and punished for organizing and participating in assemblies, meetings and manifestations, also they shall not be persecuted and punished for their opinions, views and statements, unless the latter constitute a criminal act or other violation of domestic law.

446. With a view to guaranteeing national security and public order, as well as the protection of the health of the citizens, the assemblies, meetings and manifestations can be held at any time of the day and night, with the exception from 22:00 p.m. to 6:00 a.m. There are some other restrictions, namely:

1. There is a ban for assemblies, meetings and manifestations in the marked zone around the National Assembly, and in immediate proximity of military zones;

2. In participating and attending the above-mentioned peaceful assembly, citizens shall not carry arms or any other articles which can be used to threaten the life and health of people or to cause material damage; obviously drunk persons; masked individuals which can hinder their identification;

3. Individuals who conduct themselves in a manner of interfering with the conduct of the assembly, meeting or manifestation, brutally violate public order, and individuals indicated under item 2 above.

447. Those violating the established order and guarantees for conducting assemblies, meetings and manifestations shall be fined, unless they are liable to heavier penalties.

448. There are sanctions under the law, such as deprivation of freedom for persons who use force, cheat and defraud, threaten or resort to any other unlawful way to break up or disrupt an assembly, meeting or manifestation in compliance with the Law on the Assemblies, Meetings and Manifestations.

449. If the time and place for an assembly, meeting, or manifestation and the approaches to them are liable to disrupt public order or the traffic safety the mayor, or the chairman of the municipal committee can introduce the necessary changes. They are also empowered to ban holding an assembly, meeting or manifestation if there are indications that these activities shall be used for a forced change of the constitutionally established State order, or for the territorial integrity of the State; threaten public order in the city or town when it will be held; threaten public health when there is an epidemic warning; violate the rights and freedoms of the other citizens.

450. Such bans shall be announced by a written motivated notice 24 hours in advance of the meeting. The organizer(s) can appeal the ban and the municipal council shall pronounce itself on it within 24 hours. If the required time limit is not observed, the planned meeting can be held.

Article 22

451. The rights recognized in article 22 of the International Covenant are guaranteed by the Bulgarian Constitution in article 44, which states that: “(1) Citizens shall be free to associate; (2) No organization shall act to the detriment of the country’s sovereignty and national integrity, or the unity of the nation, nor shall it incite racial, national, ethnic, or religious enmity or an encroachment on the rights and freedoms of citizens; no organization shall establish clandestine or paramilitary structures or shall seek to attain its aims through violence; (3) The law shall establish which organizations shall be subject to registration, the procedure for their termination, and their relationships with the state.”

452. According to article 11 of the Constitution “(1) Politics in the Republic of Bulgaria shall be founded on the principle of political plurality. (2) No political party or ideology shall be proclaimed or affirmed as a party or ideology of the state. (3) All parties shall facilitate the formation and expression of the citizens’ political will. The procedure applying to the formation and dissolution of political parties and the conditions pertaining to their activity shall be established by law. (4) There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent seizure of state power.”

453. The Constitutional Court of the Republic of Bulgaria has clearly defined the scope of article 11 (4) of the Constitution. The Court stated that article 11 (4) prohibits the existence of political parties, the membership of which is expressly limited by its articles of association to persons belonging to a particular racial, ethnic or religious group, irrespective of whether it is in a majority or in a minority. This provision does not contain limitations on — and consequently may not be used to prevent — any minority religious, ethnic or religious groups from “organising themselves at all”. On the contrary, there are both political parties, the membership of which includes overwhelmingly persons, belonging to particular ethnic groups, and associations formed by persons, all of whom belong to a particular ethnic group.

454. Article 12 of the Constitution states that “(1) Associations of citizens shall serve to meet and safeguard their interests. (2) Citizens’ associations, including trade unions, shall not pursue any political objectives, nor shall they engage in any political activity which is in the domain of the political parties.”

455. The registration, the activities and the termination of the political parties are regulated by the Law on the Political Parties.

456. Article 2 states that “(1) Political parties shall be voluntary associations of citizens who have voting rights under the Bulgarian legislation. (2) Political parties shall assist the formation and expression of the political will of the citizens by way of elections or in other democratic manners. (3) Political parties shall use democratic means and methods to achieve their political aims.”

457. Article 10 states that “(1) A political party shall be incorporated by initiative of at least 50 citizens with voting rights under the Bulgarian legislation who shall incorporate initiative committee.”

458. Article 11 states that “(1) Each citizen with voting rights under the Bulgarian legislation may join the subscription by an autographically fulfilled and signed declaration of personal membership in the pattern approved by the initiative committee before the foundation assembly is held.”

459. Article 12 states that “(1) A political party shall be incorporated at a foundation assembly, which assembly shall be held on the territory of the Republic of Bulgaria within three months from the date of adopting of the declaration of foundation. (2) Foundation assembly of political party shall be legal, if at least 500 citizens with voting rights under the Bulgarian legislation, who has signed a declaration under Art. 11, present it.”

460. Article 15 states that: “(1) The political party shall be registered in the political parties Register in the Sofia-city Court.”

461. Article 21 states that: “The activity of the political parties shall be funded by own revenues and by state subsidy.”

462. Article 38 states that:

“Political Party shall be terminated in case of:

1. Decision for merger or consolidation with another party;
2. Decision for splitting in two or more parties;
3. Decision for dissolving itself as per its Articles of Association;
4. Decision of the Constitutional Court, entered in force, by which decision the political party is announced anti-Constitutional;
5. Dissolving by a decision of the Sofia-city Court.”

463. Article 40 states that:

“(1) The Sofia-city Court shall dispose dissolving of a political party only in the cases, if:

1. The party violates the requirements of this law systematically;
2. Its activity contradicts the Constitutional provisions;
3. For a period longer than 5 years from its latest court registration it has not participated in elections of Members of Parliament, of President and Vice-President or of municipal counsellors and mayors.

4. It has failed to submit its annual financial reports to the Audit Office for two consecutive years;

5. It has failed to hold the meetings of its supreme authority stipulated in its Articles of Association for more than two consecutive times, but not less than once for 5 years and has failed to submit to the court the members of the new management for registration.”

464. The Constitutional Court was seized of two cases on the basis of article 11, paragraph 4 of the Constitution.

465. In 1992, 93 members of the Grand National Assembly requested the Constitutional Court to pronounce itself pursuant to article 11, paragraph 4, and to declare unconstitutional the Movement of Rights and Freedoms (MRF), as well as to declare null-and-void the election of those members of the Grand National Assembly who were elected on the MRF ballot list.

466. The Constitutional Court issued in this particular case its Decision No. 4 of 21 April 1992²² It reads as follows.

467. “1. Rejects the request of the members of the Grand National Assembly to declare unconstitutional the Movement for Rights and Freedoms (MRF) on the basis of article 11, paragraph 4, of the Constitution of the Republic of Bulgaria; 2. Rejects the request of the members of the Grand National Assembly to declare null-and-void the election of the members on the MRF ballot list, held on 13 October 1991.”

468. On 4 March 1999, 61 members of the 38th National Assembly of the Republic of Bulgaria contested before the Constitutional Court on the basis of article 11, paragraph 4, of the Constitution, the constitutionality of the “Ilinden United Macedonian Organization, a party for economic development and integration of the population” with headquarters in the city of Blagoevgrad, registered as a political party by the Sofia City Court by a decision No. 48 of 12 February 1999.²³ The argument was that the activities of OMO “Ilinden”-PIRIN organization, prior to and after its registration by the court, explicitly showed that “its aims are directed against the unity of the Bulgarian nation, the sovereignty and territorial integrity of the country”. It was also argued that this organization engaged in separatist ideas and actions.

469. The Constitutional Court in its Judgment No. 1 of 29 February 2000 declared that “the Ilinden United Macedonian Organization, the party for economic development and integration of the population (OMO “Ilinden”-PIRIN) with its headquarters in the city of Blagoevgrad, and registered by the Sofia City Court, No. 12802/98 is unconstitutional.”

470. In this Judgment, the Constitutional Court emphasized that “the meaning of the term ‘unconstitutional’ was in conformity with article 22, paragraph 2, of the International Covenant on Civil and Political Rights, as well as with article 11, paragraph 2, of the European Convention on Human Rights.”

471. The same year, OMO challenged the Bulgarian Constitutional Court’s judgment by referring the matter to the European Court of Human Rights in Strasbourg. In its Judgment of 20 October 2005²⁴ the European Court of Human Rights found that the refusal of the Bulgarian court to register “OMO Ilinden-Pirin” in fact constituted a violation of article 11 – freedom of association, of the European Convention on Human Rights. At the same time, the Court observed that the refusal by the Bulgarian court to register OMO “Ilinden”-PIRIN

²² State Gazette, No. 35/1992.

²³ State Gazette, No. 16, dated 23 February 1999.

²⁴ *Application no. 59491/00*, JUDGMENT, final 19 January 2006.

was based on the law and pursued a legitimate aim – guaranteeing national security. In particular, the Court accepted as reasonable the authorities’ apprehension in connection with the separatist ideas propagated by some “OMO Ilinden-Pirin” leaders and members. The violation found of article 11 of the European Convention on Human Rights was based on the Court’s evaluation that the actions of the Bulgarian authorities were disproportionate vis-à-vis the seriousness of the risk to national security.

472. The Court ruled that the respondent State was to pay the applicants compensation amounting €3,000. The latter sum was paid within the date set.

473. The decision of the Bulgarian Constitutional Court, however, did not prevent a group of Bulgarian citizens, belonging to the above-mentioned organization, to start new proceedings in 2006, 2007 and 2008 to register a political party. The requests for registration were refused by the court because of non-compliance of the applicants with the formal requirements for registration under the Law on Political Parties.

474. Article 49, paragraph 1 of the Constitution provides that “Workers and employees shall be free to form trade union organizations and alliances in defence of their interests related to work and social security.” The Republic of Bulgaria is a party to ILO Conventions No. 87 (1948) concerning Freedom of Association and Protection of the Right to Organise) and No. 98 (1949) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.

475. During the period under review, the right of factory and office workers in the Republic of Bulgaria to form and join trade unions of their own choice continued to be implemented in accordance with the principle of free and pluralistic trade-union association, as established in articles 12, 44 and 49 (1) of the Constitution, ILO Conventions No. 87 and No. 98, articles 5 and 6 of the European Social Charter, and articles 4 and 33 to 49 of the Labour Code.

476. The representative trade union organizations enjoy all rights as trade union organizations, which the Labour Code and the other laws confer on them to represent and defend the socio-economic interests of their members.

477. Bulgarian legislation does not know and does not impose any restrictions on the right of factory and office workers, including civil servants, to form or join trade unions (art. 33 of the Labour Code, arts. 43 to 46 of the Law on the Civil Servants). Restrictions are established only on the membership in the trade union organizations of the employees at the Ministry of Interior and at the Ministry of Defence (see below).

478. Civil servants, too, have the right to freedom of trade-union association for the defence of their interests (arts. 49 (1) and 116 (2) of the Constitution and arts. 43 and 44 of the Law on the Civil Servants). The trade union organizations represent and defend the interests of civil servants before the State bodies on matters concerning their civil-service and social-security relations by means of proposals, demands, participation in the preparation of drafts of internal regulations and ordinances concerning civil-service relations (art. 44 (3) of the Law on the Civil Servants).

479. The right to organize into trade unions in the armed forces has certain peculiarities.

480. According to article 197 (1) and (2) of the Law on the Defence and Armed Forces, service persons may not participate in trade union organizations. Service persons are not entitled to take trade union action, either.

481. Service persons who are doctors, dental practitioners and who practise their medical profession are, without restraint, members of the respective professional organizations: the doctors of the Bulgarian Medical Association and the dental practitioners of the Bulgarian Dental Association (art. 197a of the Law on the Defence and Armed Forces). In peacetime

service persons may associate for implementation of activities of mutual interest provided this is done off duty and does not impair combat readiness, training, discipline and morale of the personnel and does not breach the established order and the unity of command in the armed forces. Such associations may participate in similar international organizations (art. 198 of the Law on the Defence and Armed Forces).

482. Civil servants employed at the Ministry of Defence, in the Bulgarian Armed Forces and in the structures subordinated to the Minister of Defence, may form and join trade union organizations under the Law on the Civil Servants (arts. 271 and 274 of the Law on the Defence and Armed Forces), while employees under an employment relationship have the right to form and join trade union organizations without limitations (art. 274 (1) of the Law on Defence and Armed Forces). On this basis, two trade unions have been established and exist at the Ministry of Defence: a Federation of Independent Trade Union Organizations in the Bulgarian Armed Forces, which is affiliated to the Confederation of Independent Trade Unions in Bulgaria, and a Defence National Trade Union, which is affiliated to the Podkrepa Confederation of Labour.

483. The right of the employees at the Ministry of Interior to organize into trade unions is recognized in Chapter Twenty of the Law on the Ministry of Interior. According to article 257 (1) of the Law on the Ministry of Interior, “[t]he employees of the Ministry of Interior may organize for support and defence of their professional and socio-economic interests”.

Article 23

484. The Constitution of the Republic of Bulgaria proclaims marriage as a voluntary union between a man and a woman on the basis of equality between husband and wife in marriage and family.

485. Article 46 of the Constitution provides that “(1) Matrimony shall be a free union between a man and a woman. Only a civil marriage shall be legal. (2) Spouses shall have equal rights and obligations in matrimony and the family. (3) The form of a marriage, the conditions and procedure for its conclusion and termination, and all private and material relations between the spouses shall be established by law.”

486. According to article 3 of the Family Code, “The family relations shall be settled in accordance with the following principles: protection of the marriage and the family by the State and the society; equality of men and women; voluntariness and durability of the matrimonial union as a basis of the family; comprehensive protection of the children; equality of the children born in wedlock, out of wedlock and the adopted children; respect for the personality; care and support between the members of the family.”

487. Article 5 of the Family Code stipulates that “The society and the state shall provide conditions for development of the family, shall encourage the child birth, shall protect and encourage motherhood and support the parents in their raising and upbringing of the children. They shall take care for the preparation of the young people for married life.”

488. Article 6 stipulates that “(1) Only marriage contracted in the form prescribed by this code shall give rise to the consequences related to the marriage by the laws. (2) Religious ceremony can be concluded only upon contracting civil marriage. This ceremony shall have no legal effect.”

489. Article 7 stipulates that “Marriage shall be contracted upon mutual consent of a man and a woman given personally and simultaneously before the official from the registry office.”

490. Article 12 stipulates that “(1) Marriage can be contracted by a person who has accomplished 18 years of age. (2) As an exception, if important reasons so require,

marriage can also be contracted by a person who has accomplished 16 years of age by a permit of the chairman of the regional court at the place of residence of the person.”

491. Article 14 stipulates that “The spouses shall have equal rights and obligations in their marriage.”

492. Article 17 stipulates that “Each of the spouses shall have the freedom of professional choice.”

493. Article 18 stipulates that “The spouses shall be obliged, through mutual understanding and common efforts, and according to their abilities, property and income, to provide the welfare of the family and to take care of the raising, upbringing and support of the children.”

494. Article 19 stipulates that “(1) The possessions and the rights on possessions, as well as the bank deposits acquired by the spouses during their marriage as a result of a joint contribution shall belong jointly to both spouses notwithstanding in whose name they have been acquired.”

495. In cases of divorce the court shall decide who shall have the custody of the children. The court shall also decide on parental rights, set out the measures on using these rights as well as on the personal relations between children and parents and child alimony. The court shall decide on child custody having assessed all circumstances and taking into account the interests of the children. These rights shall not be accorded to either the husband or wife who is guilty for the divorce if this shall affect negatively the upbringing of the children.

496. The court shall hear the parents and children if the latter are of 14 years of age. The court shall decide if it is prudent to hear children of ten years of age, as well as close family friends.

497. In exceptional cases, if the children’s interests so warrant, the court may decide that the children shall live with their grandparents or other relatives and with their consent in other families willing to accept the children or in specialized institutions.

498. If circumstances are changed, the court may, on the request of either parent, change the earlier measures and set new ones.

Article 24

499. According to the Bulgarian Constitution (art. 14) childhood “shall enjoy the protection of the State and society”.

500. Article 47 of the Constitution states: “(1) The raising and upbringing of children until they come of legal age shall be a right and obligation of their parents and shall be assisted by the State. ... (3) Children born out of wedlock shall enjoy equal rights with those born in wedlock. (4) Abandoned children shall enjoy the protection of the state and society. ...”

501. The Law on the Child Protection, 2002, guarantees the rights, principles and measures for child protection, emphasizes State and municipal bodies and their interaction in ensuring and taking action in child protection, as well as the participation of legal entities and individuals involved in such activities. The State guarantees and protects the basic human rights of the children in all walks of public life, in all age groups, their social status, physical, health and psychic status, suitable economic, social and cultural environment, education, freedom of views and convictions, and security as well.

502. The State policy of child protection is based on the National Child Strategy, adopted by the National Assembly following a proposal by the Council of Ministers. It is based on the Law on the Child Protection.

503. The basic principles for the child protection policy are the following: respect for, and observance of, the child as a person; breeding children in a family environment, which is to the best interest of the child itself; special protection of children at risk; accommodation of children at risk with suitable families on a voluntary basis; temporary restrictive measures; immediate protection measures; constant care of the child's needs; ensuring the development of children with talents; encouraging the parents' responsibilities; preventive security measures and strict control on such measures.

504. The Law for the Civil Registration provides in article 43 that:

“(1) Each birth shall be notified in writing and announced verbally in 5 days term the day of birth being not counted.

(2) ... The announcement of the birth shall be obligation of:

1. The chief of the medical establishment or the person to which with an order this has been assigned when the birth has happened in a medical establishment;

2. A competent medical person when the birth has not happened in a medical establishment;

3. The official for civil status when in the settlement there is no competent medical person.

(3) The announcement of the birth shall be obligation of the father and shall be done personally or through a person empowered by a notary. ...

(4) The mother shall also be able to announce the birth personally or through a person empowered by a notary.

(5) If the father, the mother or another person do not announce the birth, the official for civil status shall compile the birth certificate on the basis of the announcement of para 2.

(6) The official for civil status shall compile the birth certificate after the event has been ascertained in writing and announced. Immediately after the compiling of the birth certificate the parents shall be issued original birth certificate.”

505. The civil registration procedure of natural persons is accessible, understandable and free of charge. Special rules regulate the registration of abandoned children.

Article 25

506. Article 1 of the Constitution provides that: “... (2) The entire power of the state shall derive from the people. The people shall exercise this power directly and through the bodies established by this Constitution”.

507. Article 6 of the Constitution provides that “All elections and national and local holding and referendums shall be held on the basis of universal, equal and direct suffrage by secret ballot.”

508. All Bulgarian citizens are entitled to elect State and local organs, and to be elected to take part in plebiscites.

509. Article 65, paragraph 1 of the Constitution provides that “Eligible for election to the National Assembly shall be any Bulgarian citizen who does not hold another citizenship, is above the age of 21, is not under a judicial interdiction, and is not serving a prison sentence.”

510. Article 138 stipulates that “The body of local self-government within a municipality shall be a municipal council elected directly by the populace for a term of four years by a procedure established by law.”

511. Conditions of access to the public service in Bulgaria are provided in the Law for the Civil Servant. The candidates for civil servants shall fulfil the following requirements:

- They shall be of age (18 years and above)
- They shall be Bulgarian citizens, or citizens of another State member of the European Union
- They shall not be under detention
- They shall not have been convicted of pre-meditated crimes
- They shall conform to specific requirements of the normative acts for the respective positions

512. The Law (art. 7, para. 6) prohibits any discrimination, privileges or restrictions in civil service appointments on grounds of race, nationality, ethnic belonging, sex, origin, religion, convictions, membership in political, trade unions parties and other public organizations or movements, personal, social or property status.

Article 26

513. Article 6, paragraph 2 of the Constitution stipulates that “All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status, or property status.”

514. The Law on the Protection against Discrimination prohibits any form of discrimination and guarantees protection to all persons living on the territory of the Republic of Bulgaria and under its jurisdiction against discrimination on all grounds recognized by the International Covenant on Civil and Political Rights. The law defines direct or indirect discrimination on grounds of sex, race, nationality, ethnic belonging, human genome, citizenship, origin, religion or belief, political affiliation, personal or social status, disability, age, sexual orientation, family status, material status or any other criteria, established by law or by an international instrument which has been acceded to by the Republic of Bulgaria. There is also a definition of the term “discrimination” which means harassment on grounds of the above-mentioned criteria. Added to that definition are the criteria of sexual harassment, instigation to discrimination, persecution and racial segregation.

515. The Law on the Protection against Discrimination states in article 1: “The Act provides for protection against all forms of discrimination and contributes to its prevention.”

516. Article 2 stipulates that:

“The purpose of this Law is to ensure for every person the right to:

1. Equality before the law;

2. Equality of treatment and of opportunities for participation in the public life;

3. Effective protection against discrimination.”

517. Article 3 states that “(1) This Law shall protect against discrimination all natural persons on the territory of the Republic of Bulgaria. (2) Associations of natural persons, as well as legal persons, shall enjoy the rights under this Law when they have been discriminated on the grounds, referred to in Article 4, Paragraph 1 regarding their members or the persons employed by them.”

518. Article 4 states that “(1) Any direct or indirect discrimination on the grounds of sex, race, nationality, ethnic origin, citizenship, origin, religion or belief, education, opinions, political belonging, personal or public status, disability, age, sexual orientation, marital status, property status, or on any other grounds, established by the law, or by international treaties to which the Republic of Bulgaria is a party, is forbidden. (2) Direct discrimination shall be any less favourable treatment of a person on the grounds, referred to in paragraph 1, than another person is, has been or would be treated under comparable circumstances. (3) Indirect discrimination shall be to put a person, on the grounds referred to in Paragraph 1 in a less favourable position in comparison with other persons by means of an apparently neutral provision, criterion or practice, unless the said provision, criterion or practice have objective justification in view of achieving a lawful objective and the means for achieving this objective are appropriate and necessary.”

519. Information about the Commission for Protection against Discrimination is given under article 2 of the present report.

520. Article 11 of the Criminal Procedure Code provides for the following: “All citizens who participate in the penal procedure shall be equal before the law. No privileges or restrictions based on race, nationality, ethnic belonging, sex, origin, religion, education, convictions, political belonging, personal and social or property status shall be allowed. (2) The court, the prosecutor and the investigating bodies shall apply the laws precisely and equally to all citizens.”

521. The Penal Code provides as follows: Article 162 “(1) Who, through speech, press or other means for mass information, through electronic information systems or in any other way, propagates or incites racial, national or ethnic hostility or hatred or racial discrimination shall be punished by imprisonment of up to four years and by fine from five thousand to ten thousand levs and by public reprobation. (2) Who applies violence against another or damages his property because of his nationality, race, religion or his political conviction shall be punished by imprisonment of up to four years and by fine from five thousand to ten thousand levs and also by public reprobation. (3) Who forms or heads an organisation or a group whose goal is the perpetration of the acts under Para 1 and 2 or systematically allows the commitment of such acts shall be punished by imprisonment of one to six years and by fine from ten thousand to thirty thousand levs and also by public reprobation. (4) A member of such an organisation or a group shall be punished by imprisonment of up to three years and by a public reprobation.”

522. Article 163 states that:

“(1) The persons who participate in a crowd for attack on groups of the population, individual citizens or their property in connection with their national, ethnical or racial belonging shall be punished:

1. The instigators and leaders – by imprisonment of up to five years;
2. All the rest – by imprisonment of up to one year or corrective labour.

- (2) If the crowd or some of the participants are armed the punishment shall be:
 1. For the instigators and leaders – imprisonment of one to six years;
 2. For all the rest – imprisonment of up to three years.
- (3) If an attack is carried out and as a result of it a serious bodily harm or death has followed the instigators and the leaders shall be punished by imprisonment of three to fifteen years and all the rest – by imprisonment of up to five years, unless they are subject to a more serious punishment.”

Framework Programme for Equal Integration of Roma in Bulgarian Society

523. On 22 April 1999, the Council of Ministers adopted the Framework Programme for Equal Integration of Roma in Bulgarian Society. Its strategic aim was to remove the unequal treatment of Roma in society, which continues to be one of the fundamental political priorities of the State.

524. Bulgaria is consistently pursuing its commitment to achieve the integration of Roma in society as equal citizens on the basis of the principle of preventing any discrimination and of ensuring full equality. This entails coordinated and consistent efforts to resolve the basic social and economic problems of Roma.

525. There are a number of projects aimed at reducing Roma unemployment and increasing their professional training to make them competitive at the labour market. Special efforts have been taken for full integration of Roma children in education. A number of measures have also been taken to facilitate the access to health care services for Roma.

526. The Framework Programme for Equal Integration of Roma in Bulgarian Society also provides for the creation of a State body with functions to study and analyze the respect for and observance of rights and freedoms of Bulgarian citizens, without any discrimination on grounds of ethnic origin, meting out sanctions for violations in accordance with the law, bringing to the attention of prosecutors and courts of law cases of violations of rights on ethnic grounds, voicing opinions on draft law proposals and normative administrative acts.

527. The Programme also envisages special measures to ensure Roma employment, particularly setting up programmes for professional training as well as a special fund with State participation, with the aim of granting loans and credits to be used for employment of Roma. Other programmes are aimed at the full integration of Roma children into the education system, completely abolishing the practice of sending healthy Roma children to schools for mentally retarded children, providing possibilities for studying the Romany language as part of the curriculum, training university graduates, programmes for teaching elderly Roma to read and write, enhance Roma presence in national media, guarantee the equality of Roma women, urbanization of Roma neighbourhoods.

Decade for Roma Integration 2005–2015

National Action Plan

528. On 14 April 2005, the Council of Ministers adopted a National Action Plan for Roma Integration 2005–2015. Its main purpose is to carry out the Framework Programme for Roma Integration in Bulgarian Society. There are four main priorities in the National Action Plan, namely, education, health care, labour employment and improving housing conditions.

Article 27

Population census of the Republic of Bulgaria in 2001
Population by 1 March 2001, districts, religion, ethnic group

Religion/District	Ethnic group										
	Total	Bulgarian	Turkish	Roma/Gypsy	Russian	Armenian	Vlahs	Macedonian	Greek	Ukrainian	Jewish
Total	7 928 901	6 655 210	746 664	370 908	15 595	10 832	10 566	5 071	3 408	2 489	1 363
Eastern Orthodox Church	6 552 751	6 315 983	5 425	180 326	14 640	3 821	10 190	4 792	2 801	2 341	184
Catholics	43 811	37 811	2 561	1 059	94	123	12	8	47	29	5
Protestants	42 308	14 591	2 066	24 651	97	110	145	21	9	22	10
Muslims	966 978	131 531	713 024	103 436	86	-	19	129	401	2	-
Other religions	14 937	4 286	442	1 767	86	6 508	9	16	14	14	705
Not self-identified	283 309	151 008	23 146	59 669	592	270	191	105	136	81	459
No indication	24807	-	-	-	-	-	-	-	-	-	-

529. As stated, the Constitution takes into account the existing ethnic, religious and linguistic diversity in the country. Decision No. 4 of the Constitutional Court, dated 21 April 1992, states as follows: "Having been built upon the idea of the unity of the Bulgarian nation (preamble, arts. 1, para. 3; 2, para. 1; and 44, para. 2), the Constitution of the Republic of Bulgaria recognizes the existence respectively of religious, linguistic and ethnic differences and the bearers of such differences. A number of constitutional provisions are indicative in this respect.

530. Article 29, paragraph 1 of the Constitution stipulates that "No one shall be subjected to ... forcible assimilation."

531. The Constitution and the law guarantee the right of everyone to develop his culture in accordance with his ethnic self-identification and to study and receive information in his mother tongue.

532. The Government encourages the study of cultures, history, languages and religions of minority groups in the Republic of Bulgaria.

533. Persons belonging to different ethnic communities are entitled to study their mother tongue.

534. Article 36, paragraph 2, of the Constitution provides the guarantee that "citizens whose mother tongue is not Bulgarian shall be entitled to learn their own language and to use it alongside the study of Bulgarian".

535. Article 8, paragraph 2, the Law on National Education provides that "Those pupils whose mother tongue is not Bulgarian shall be entitled, in addition to the compulsory study of the Bulgarian, to study their mother tongue at municipal schools under the protection and control of the State."

536. The Rules on the Law on national education (art. 5, para. 4) give the following definition: "Mother tongue for the purposes of the Rules shall mean the language used by a child for communication in his or her family prior to entering school."

537. The Council of Ministers' Decree No. 183, dated 5 September 1994, concerning mother tongue education in municipal schools, provides the following: Article 1 "(1) Pupils, whose mother tongue is not the Bulgarian language, shall receive education in their mother tongue from the first to the eighth class, on a voluntary basis. (2) Mother tongue education shall be conducted for four hours per week."

538. Article 2 paragraph 4, provides for free of charge text books on mother tongue for pupils.

539. Under article 5 mother tongue education shall be financial secured by municipal budgets.

540. Regulation No. 4 of the Ministry of Education and Sciences, dated 2 September 1999, concerning curricula states as follows: Article 12 “School hours shall be divided in such a way as to cover school subjects, cultural and educational subjects and mother tongue education, each subject receiving up to 72 hours per school year for the ninth and tenth grades, and up to 108 hours for the eleventh and twelfth grades.”

541. The Law on educational levels, general educational minimum and curricula (art. 15, para 3) provides for the compulsory curricula to include mother tongue education, in accordance with article 8, paragraph 2, of the Law on National Education.

542. An important achievement in the Law on educational levels, general educational minimum and curricula is the fact that education in mother tongue was made a compulsory subject. In this way, there are legal guarantees for mother tongue education to be a regular subject, i.e. “a compulsory” subject, in the regular school hours with full time teachers.

543. In 2004, the MES adopted the “Strategy for Educational Integration of Children and Students from Ethnic Minority Groups” which was supplemented by follow-up action plans the school years 2004/2005 and 2008/2009.

544. The Turkish language is being studied as a mother tongue on the basis of school programmes, text books and dictionaries, approved by the Ministry of Education and Sciences for all classes from the first to the eighth grades.

545. For example, in the 2001–2002 school year, 34,860 pupils in 520 schools in the country, with 703 teachers studied Turkish as a mother tongue. The Turkish language as a freely chosen subject is taught four hours a week in the first to the eighth grades. It is a compulsory subject in the ninth, tenth and eleventh grades.

546. There are experts in the Turkish language employed by the regional Inspectorates of Education, to meet the needs of regions with big numbers of pupils studying Turkish. These are the regions of Shumen, Burgas, Ruse and Kurdjali. In the rest of the regions, these functions are taken up by experts on organization and control, or languages.

547. Turkish is studied in private secondary Muslim schools in Shumen, Russe and Momchilgrad, as well as in the “Balkan Schools” of the private Balkan College Foundation, and in the private “Druzhiba” (“Friendship) secondary school of the Bulgarian-Turkish Democratic Foundation.

548. The “Konstantin Preslavski” University in Shumen and the Pedagogical College in Kurdjali train teachers in the Turkish language. The Turkish language is also one of the subjects studied in the “St. Kliment Ohridski” University and the Higher Islamic Institute in Sofia.

549. There are also special courses in the Turkish language organized for teachers in the Republic of Turkey.

550. Armenian, Hebrew and Greek are also studied as mother tongues in Bulgarian schools in Sofia, Plovdiv, Sliven and in other cities and towns, though these schools do not yet provide compulsory classes for the study of these languages after the eighth grade.

551. There are two municipal schools in Sofia where about 750 pupils of Armenian origin study Armenian four hours per week. In Plovdiv, there are about 350 pupils of Armenian origin studying Armenian. Armenian is also taught and studied in other cities by groups of pupils attending Saturday and Sunday schools.

552. Romanian is studied as a compulsory subject in the specialized senior high-school in Sofia, opened in 1999–2000 school year. Approximately two-thirds of the pupils are of Vlah-Romanian origin. The rest study Romanian as a foreign language.

553. There is a school, the “Dimcho Debelyanov”, in Sofia, where one third of the pupils are of Jewish origin. There are also several pupils of Turkish, Roma and Korean origin. They all study Hebrew and English although Hebrew is not the mother tongue of the Bulgarian Jews. There are also “Sunday schools” in Sofia, Russe, Vidin, Plovdiv, Burgas and Kyustendil where Hebrew is taught.

554. Greek is taught and studied in courses organized by the “Rechitza” Culture Club of the Karakachans in Sliven.

555. There are a number of experts on the staff of the Ministry of Education and Sciences, in charge of organizing the teaching and study of Turkish, Romani, Hebrew and Armenian as a mother tongue.

556. Teaching Romani began in some municipal schools in 1992 with some 4,000 Roma pupils. By 1999, their number dwindled to around 500. Some of the difficulties are to be found in the lack of a written language, etc.

557. The equal access to high-quality education is ensured through joint education and training of children and pupils of different ethnic origin in the settlements where the necessary conditions exist, and through the provision of additional educational and training for pupils who have problems with their studies.

558. Article 54, paragraph, 1 of the Constitution stipulates that “Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognized and guaranteed by the law.”

559. The Law on the Protection and Development of Culture provides the basic framework of the national cultural policy of the Republic of Bulgaria. Article 2 outlines the main priorities of this policy, i.e. “promotion of the cultural diversity at preservation of the unity of national culture”.

560. In the course of the National Cultural Policy Review (1996–1997), as well as at the National Debate on Bulgarian Cultural Policy (1998), the Bulgarian Government and the NGOs stressed their common view on the cultures of minority groups as an integral part of the national cultural heritage.

561. A Public Council on Cultural Diversity Issues was established and has been operating within the Ministry of Culture, as an expert and consultative body since 2002.

562. The Ministry of Culture offers financial support to various projects of cultural organizations of persons belonging to minorities, such as the Roma Cultural and Information Centre, the Roma Musical Theatre, etc. Also, in early 2003, two State cultural institutes were founded in regions with large Turkish communities: the Kadrie Lyatifova Institute in Kurdjali and the Nazim Hikmet Institute in Razgrad. Their mission is to create and stage musical, dance and theatre productions; to preserve and promote intercultural tolerance and dialogue.

563. The NCCEDI receives annual funding from the Council of Minister’s budget, to support relevant projects elaborated by organizations representing the interests of persons belonging to minority groups. The following types of projects are eligible for funding:

- Cultural events such as arts festivals, exhibitions (fine arts, applied arts and crafts)
- Artistic groups and their activities such as theatres, choirs, dance performances, art schools, etc.

- Celebrations of historical and traditional holidays
- Organization of seminars and conferences
- Educational projects
- Extra-curricular education programmes for children and students
- Printing and distribution of poetry, collections of folk tales, songs, proverbs and
- Audio and video productions

564. Culture plays a key role in the Bulgarian National Action Plan on the Roma Inclusion Decade (2005–2015). The following activities have been envisaged:

- Support for programmes and projects for cultural and social integration at a municipal level
- Opening of new libraries, internet-clubs, schools, courses
- Support for artistic groups and others undertaking creative work
- Setting up, maintaining and supporting “chitalishte” cultural clubs in the Roma districts
- Establishment of a “chitalishte” resource centre for the Roma in Sofia, which would establish a Roma chitalishte centres’ network, through which consultations could be held, information exchanged and education programmes set up
- Creation of a Roma musical theatre
- Using audiovisual tools to record and document talented people in the area of Roma music, song, and dance, as well as those with traditional skills and crafts
- Creation and maintenance of a Roma culture web portal
- Improvement of the Roma’s public image in the social, and particularly in the media space

565. Support to local cultural organizations and strengthening their capacity to act as local factors for mutual understanding and promoters of cultural diversity, is a tradition in Bulgaria. The community centres (called in Bulgarian “*chitalishte*”) are local arts and cultural centres which provide a large range of facilities and services.
